

THE
STUDENT'S LAW COMPANION,

Containing all the Regulations and the Acts
prescribed for the B. L. Examination
of the Calcutta University, with
amendments up to date.

COMPILED BY
BAMAPADA MUKHERJI, M.A.,
Vakil, High Court, Calcutta.

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THE CODE OF CIVIL PROCEDURE.

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THE FIRST SCHEDULE.—ACTS REPEALED.

THE SECOND SCHEDULE.—CHAPTERS AND SECTIONS OF THIS CODE
EXTENDING TO PROVINCIAL COURTS
OF SMALL CAUSES.

THE THIRD SCHEDULE.—BOMBAY ENACTMENTS.

THE FOURTH SCHEDULE.—FORMS OF PLEADINGS AND DECREES.

THE CODE OF CIVIL PROCEDURE, ACT. No. XIV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the
17th March, 1882.)*

An act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature ; It is hereby enacted as follows :—

PRELIMINARY.

Short title. 1. This Act may be cited as "The Code of Civil Procedure":

Commencement. and it shall come into force on the first day of June 1882.

This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874.

Interpretation-clause. 2. In this Act, unless there be something repugnant in the subject or context,—

"Chapter " "Chapter" means a chapter of this Code :

"District " "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court. every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court :

"pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court .

"Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader :

- "Collector." "Collector" means every officer performing the duties of a Collector of land-revenue :
- "decree" means the formal expression of an adjudication upon any right claimed, or defence set up in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 585, is within this definition :
- "Order." "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined :
- "Judgment." "judgment" means the statement given by the Judge of the grounds of a decree or order :
- "Judge." "Judge" means the presiding officer of a Court .
- "Judgment-debtor." "Judgment-debtor" means any person against whom a decree or order has been made :
- "decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred :
- "Decree-holder." "written" includes printed and lithographed, and "writing" includes print and lithograph :
- "Written." "signed" includes marked, when the person making the mark is unable to write his name ; it also includes stamped with the name of the person referred to :
- "Signed ." "foreign Court" means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council :
- "foreign Court." "foreign judgment" means the judgment of a foreign Court .
- "foreign judgment." "public officer" means a person falling under any of the following descriptions (namely) :—
- "Public officer." every Judge ;
 every covenanted servant of Her Majesty ;
 every commissioned officer in the military or naval forces of Her Majesty while serving under Government ;
 every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;
 every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;
 every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861 or the "Code of Civil Procedure," or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall effect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X of 1877, section 320, and every notification published before the same day, purporting to be used under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely) :—

the Central Provinces Courts Act, 1865 :
the Burma Courts Act, 1875 :

- the Punjab Courts Act, 1877.*
- the Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

4A.† (1) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the Official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. IX of 1887,* and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

6. Nothing in this Code affects the jurisdiction or procedure—

(a) Military Courts of Request;

(c) of Village Munsifs and Village Panchayats in Madras,

(a) of Military Courts of Request ;

(b) *Rep. by Act VIII of 1887, sec. 2 and Sch.*

(c) of Village Munsifs or Village Panchayats under the provisions of the Madras Code ; or

* See Act XVIII of 1884.

† See Act VII of 1888, sec. 2.

(d) of Recorder of Rangoon sitting as Insolvent Court.

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, or Maulmain,†

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to—

(a) the jurisdiction exercised by certain jagirdars and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act No. XV of 1840 in the cases therein mentioned, and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the Civil Courts allowed therein shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provision contained in the enactments mentioned or referred to in this section.

8.* Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter XXXIX, and by the Presidency Small Cause Courts Act, 1882, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

Division of Code 9. This Code is divided into ten Parts, as follows :—

The First Part :	Suits in General.
The Second Part :	Incidental Proceedings.
The Third Part :	Suits in particular Cases.
The Fourth Part :	Provisional Remedies.
The Fifth Part :	Special Proceedings.
The Sixth Part :	Appeals.
The Seventh Part :	Reference to and Revision by the High Court .
The Eighth Part :	Review of Judgment.
The Ninth Part :	Special Rules relating to the Chartered High Courts.
The Tenth Part :	Certain Miscellaneous Matters.

PART I. OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

* See Act XV of 1882, s. 3. and Act VII of 1883, s. 4.

† See Act IX of 1887, sec. 2 (3).

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue

has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and

has been heard and finally decided by such Court.

Explanation I.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence

that the Court which made it had competent jurisdiction, unless the contrary appear on the record ; but such presumption may be removed by proving the want of jurisdiction.

When foreign
judgment no
bar to suit in
British India

14. No foreign judgment shall operate as a bar to a suit in British India—

(a) if it has not been given on the merits of the case :

(b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :

(c) if it is in the opinion of the Court before which it is produced contrary to natural justice :

(d) if it has been obtained by fraud :

(e) if it sustains a claim founded on a breach of any law in force in British India.

Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an Order of Her Majesty in Council, the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed.

CHAPTER II.

OF THE PLACE OF SUING.

Court in which
suit to be in-
stituted.

15. †Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be in-
stituted where
subject-matter
situate

16 * Subject to the pecuniary or other limitations prescribed by any law, suits—

(a) for the recovery of immoveable property,

(b) for the partition of immoveable property,

(c) for the foreclosure or redemption of a mortgage of immoveable property,

(d) for the determination of any other right to or interest in immoveable property,

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

* See Act VII of 1888, s. 5.

† S. 15 has been repealed in Ajmere and Merwara—see Reg. I of 1877, s. 2 and Sch., and *supra*, s. 3.

Provided that suits to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in British India.

16A. *(1) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1) and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the cause of action arises, or
 (b) the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or
 (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain.

Provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

* See Act VII of 1888, s. 6.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Explanation III.**—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely :—

- (i) the place where the contract was made ;
- (ii) the place where the contract was to be performed or performance thereof completed ;
- (iii) the place where, in performance of the contract, any money to which the suit relates was expressly or impliedly payable.

Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides ; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate :

* See Act VI of 1833, sec. 7

Provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

Suits for im-
moveable prop-
erty situate in
different dis-
tricts.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Power to stay
proceedings
where all defend-
ants do not re-
side within
jurisdiction

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain; the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly ;

and, if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled ; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

Remission of
court-fee where
suit instituted
in another
Court.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee .

Provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

Procedure
where Courts
in which suit
may be institu-
ted subordinate
to same appel-
late Court.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly ; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure
where they are
not so subordi-
nate.

23. Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction,

may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure where they are subordinate to different High Courts 24 Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate,

and such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

Transfer of suits. 25.* The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Persons who may be joined as plaintiffs. 26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled

* S. 25 has been repealed in Ajmere and Merwara—see Reg. I of 1877, s. 2, and sch. also s. 26 *ibid.*, and *supra*, s. 3.

to his costs occasioned by ~~so~~ joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

27. *Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons with his or their consent to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

29. The plaintiff may at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

31. No suit shall be defeated by reason of the misjoinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time either upon or without such application, and such terms as the Court thinks just, order that any

* See Act VII of 1883, Sec. 8.

plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added, as plaintiff or next friend. No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30. Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit. The Court may give the conduct of the suit to such plaintiff as it deems proper.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

Authority to be in writing, signed and filed. The authority shall be in writing, signed by the party giving it, and shall be filed in Court.

Recognized Agents and Pleadors.

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Appearances, &c., may be in person, by recognized agent or by pleader

Provided that any such appearance shall be made by the party in person, if the Court so direct.

Recognized agents

37.* The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

Persons holding powers-of-attorney from parties out of jurisdiction

(a) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties :

(b) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs ;

Persons carrying on trade or business for parties out of jurisdiction

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.†

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjab, and the Chief Commissioners of Oudh and the Central Provinces ; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

Recognized agents in Panjab, Oudh and Central Provinces

* In Oudh substitute the following for ss. 37 and 38 :—

“The recognized agents of parties by whom such applications and appearances may be made are—

“A permanent servant, partner, relation or friend, whom the Court may admit as a fit person to represent a party, and especially persons holding powers-of-attorney from absent parties, parties carrying on business on behalf of bankers and traders, managing agents of landlords, nearest male relations of women, and persons *ex-officio* authorized to act for Government or for any Prince or Chief

“Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognized agent, unless the Court shall otherwise direct ; and anything which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given to, or processes served on, a recognized agent, relative to a suit, shall be effectual for all purposes, in relation to the suit, as if the same had been given to, or served on, the party in person, unless the Court shall otherwise direct, and all the provisions of this Act, relative to the service of notices or processes on a party to a suit, shall be applicable to the service of notices and processes on such recognized agent.”—See Act XVIII of 1876, s. 18, and *supra*, s. 3.

† For Additional “recognized Agents” in Ajmere and Merwara, see Reg. I of 1877, s. 28.

38. * Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person unless the Court otherwise directs.

Service of process on recognized agent.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in Court.

Appointment of Pleader.

When so filed it shall be considered to be in force until revoked, with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of process on pleader.

41. Besides the recognized agents described in section 37 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to receive process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duty attested copy thereof, shall be filed in Court.

His appointment to be in writing and to be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute and so to prevent further litigation concerning them.

Suit how to be framed.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

* As to Oudh, see footnote or previous page.

• Relinquish-
ment of part of
claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

• Omission to
sue for one of
several remedies.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but, if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a early rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

Only certain
claims to be
joined with suit
for recovery of
land.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

- (a) claims in respect of mesne profits or arrears of rent in respect of the property claimed,
- (b) damages for breach of any contract under which the property or any part thereof is held, and
- (c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

45. Subject to the rules contained in Chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly ; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate

Court may
order separa-
tion.

trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded and may direct the plaintiff to be amended accordingly and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V

OF THE INSTITUTION OF SUITS

48. Every suit shall be instituted by presenting a plaintiff to the Court or such officer as it appoints in this behalf.

49. The plaintiff must be distinctly written in the language of the Court.

Provided that, if such language is not English, the plaintiff may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaintiff into the language of the Court shall be filed in Court.

50. The plaintiff must contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;
- (e) a demand of the relief which the plaintiff claims; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money suits If the plaintiff seeks the recovery of money, the plaintiff must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaintiff need only state approximately the amount sued for.

Where plaintiff sues as representative When the plaintiff sues in a representative character, the plaintiff should shew not only that he has an actual existing interest in the subject-matter but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(a) A sues as B's executor. The plaintiff must state that A has proved B's will.

(b) A sues as C's administrator. The plaintiff must state that A has taken out administration to C's estate.

(c) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaintiff must state that A has been specially appointed D's guardian.

Defendant's interest and liability to be shewn The plaintiff must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaintiff must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Grounds of exemption from limitation law. If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaintiff must shew the ground upon which exemption from such law is claimed.

Plaints to be signed and verified. 51. The plaintiff shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case :

Provided that, if the plaintiff is by reason of absence or for other good cause, unable to sign the plaintiff, it may be signed by any person duly authorized by him in this behalf.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed The verification shall be signed by the person making it.

When plant may be rejected, returned for amendment, or amended.

53. The plant may, at the discretion of the Court,—

(a) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action;

(b) at, or at any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

(i) is not signed and verified as heretofore required,

(ii) does not state correctly and without prolixity the several particulars heretofore required, or contains particulars other than those so required,

(iii) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or

(iv) is not framed in accordance with the provisions of section 42 ;

(c) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit :

Provided that a plant shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

Attestation of amendment. When a plant is amended under this section the amendment shall be attested by the signature of the Judge.

When plant shall be rejected. 54. The plant shall be rejected in the following cases :—

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(b) if the relief sought is properly valued, but the plant is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so :

(c) if the suit appears from the statement in the plant to be barred by any positive rule of law :

(d) if the plant, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on rejecting plant. 55. When a plant is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

When rejection of plant does not preclude presentation of fresh plant. 56. The rejection of the plant on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plant in respect of the same cause of action.

57. The plaint shall be returned to be presented to the proper Court in the following cases :—

When plant
shall be return-
ed to be present-
ed to proper
Court.

- (a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :
- (b) if, in a suit relating to immovable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented.
- (c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

On returning a plaint the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on
returning
plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it ; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Procedure on
admitting
plaint.

Concise state-
ments.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies of statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Register of
suits.

Production of
document on
which plaintiff
sues.

Delivery of
document or
copy.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

List of other documents.
Statement in case of documents not in his possession or power

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Suits on lost negotiable instruments.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct shall return the book to the plaintiff and cause the copy to be filed.

Original entry to be marked and returned

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Inadmissibility of document not produced when plaint filed

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

67. No party shall be ordered to appear in person unless he resides—

No party to be ordered to appear in person unless resident within 50 or where there is railway, 200 miles.

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or, where there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

Summons to be either to settle issues or for final disposal.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly :

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed "sufficient time" must be determined with reference to the circumstances of the case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses

71.* When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

72.* (A). If Delivery or transmission of summons for service

If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post or in such other manner as the Court may direct.

73. Service Mode of service.

of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants

74. When there are more defendants than one, service of the summons shall be made on each defendant.

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person when practicable, or on his agent

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section the master of a ship is the agent of his owner or charterer.

Service on agent in charge, in suits for immoveable property.

in charge of the property.

When service may be on male member of defendant's family.

defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

80. If the defendant or other person refuses to sign the acknowledgment, or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served.

82.* When a summons is returned under section 80, the Court shall if the return under that section has not been verified by the affidavit of the serving-officer, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way,

Substituted service

the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.
When service substituted, time for appearance to be fixed

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

Service within presidency towns and Rangoon, of process issued by Provincial Courts.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself, and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the

Procedure if jail be in different district.

summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Service when defendant resides out of British India and has no agent to accept service. 89 If the defendant resides out of British India and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing and forward to him by post if there be postal communication between such place and the place where the Court is situate.

Service in foreign territory through British Resident or Court. 90.* If there is British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Resident, Agent or Superintendent or the Judge of the Court returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.

Substitution of letter for summons. 91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of sending such letter. 92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Service of Process.

Process to be served at expense of party issuing. 93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service. The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Notices and orders in writing how served. 94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

* See Act VII of 1888, s 12.

Postage.

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded.

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE
OF NON-APPEARANCE.

Parties to appear on day fixed in summons for defendant to appear and answer.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit ; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

99A. If, after a summons has, whether before or after the first day of June 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation, bring a fresh suit.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows :—

Procedure if only plaintiff appears, when summons duly served, when summons not duly served,

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*.

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant :

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Of setting aside Decrees ex parte.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No decree to be set aside without notice to opposite party

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former Inquiry. part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not affect the lien upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(a) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. A alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit :

Provisos Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same :

Provided also that a written statement, or an additional written statement may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Procedure when party fails to present written statement called for by Court.

113 If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Frame of written statements.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

Written statements to be signed and verified.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

Power of Court as to argumentative, prolix or irrelevant written statement.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Attestation of amendments

When any amendment is made under this section the Judge shall attest it by his signature.

Effect of rejection.

When a statement has been rejected under this section the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

Ascertainment whether allegations in plaint and written statements admitted or denied.

117. At the first hearing of the suit the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral examination of party, or companion of himself for his pleader.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court. and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.
OF DISCOVERY AND OF THE ADMISSION, INSPECTION,
PRODUCTION, IMPOUNDING AND RETURN OF
DOCUMENTS.

121. Any party may at any time by leave of the Court deliver through the Court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer.

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Inquiry into propriety of exhibiting interrogatories.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly.

Service of interrogatories on officer of corporation or company.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bonâ fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Power to refuse to answer interrogatories as irrelevant, &c.

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such further time as the Judge may allow.

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *viva voce* examination as the Judge may direct :

Procedure where party omits to answer sufficiently
Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

Power to demand admission of genuineness of documents

The admission shall also be made in writing signed by the other party or his pleader and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Power to order discovery of document.

Every affidavit made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

Power to order production of documents during suit.

Notice to produce for inspection documents referred to in plaint, &c.

131. Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Consequence of non-compliance with such notice.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds

Party receiving such notice to deliver notice when and where inspection may be had.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

Application for order of inspection.

134. Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

Application to be founded on affidavit

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection.

Power to order issue or question on which right to discovery depends to be first determined

136. If any party fails to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered ;

Consequences of failure to answer or give inspection.

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which

has been served personallyⁿ upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 138 shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

140. The Court shall receive the documents respectively produced by the parties at the first hearing :

Provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

141.* (1) Subject to the provisions of the next following sub-section, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted, and the endorsement shall be signed by the Judge.

* See Act VII of 1888, s. 13.

(2) If a document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed by the Judge.

Endorsements on copies of admitted entries in books, accounts and records.

141A.* (1) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry.

(2) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (i) where the record, book or account is produced on behalf of a party, then by that party, or
- (ii) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

142.* When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of section 141, sub-section (1), and a statement of its having been rejected, and the endorsement shall be signed by the Judge.

Recording of admitted and return to rejected documents.

142A.* (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 141A, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the parties respectively producing them.

143. Notwithstanding anything contained in section 62, section 141A, sub-section (3), or section 142A, sub-section (2), the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Court may order any document to be impounded.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any

When document admitted in evidence may be returned.

* See Act VII of 1888, s. 13.

person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same :

When document may be returned before time limited.

Certain documents not to be returned.

Receipt to be given for returned document

Provisions as to documents applied to material objects.

Provided that a document may be returned at any time before either of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original :

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence a receipt shall be given by the party receiving it in a receipt-book to be kept for the purpose.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds : (a) issues of fact, (b) issues of law.

At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When the issues both of law and of fact arise in the same suit and the Court is of opinion that the case may be disposed of on the issues of law only it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

147. The Court may frame the issues from all or any of the following materials :—

Allegations from which issues may be framed.

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons ;

- (b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit ;
- (c) the contents of documents produced by either party.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

149. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing—

Questions of fact or law may by agreement be stated in form of issue.

- (a) that, upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;
- (b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct ; or
- (c) that upon such finding one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

151. If the Court be satisfied, after making such inquiry as it deems proper,—

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

- (a) that the agreement was duly executed by the parties,
- (b) that they have a substantial interest in the decision of such question as aforesaid, and
- (c) that the same is fit to be tried and decided,
- it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court ;

any may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ;

and, upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

If parties at issue on questions of law or fact.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII. OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing
Costs of of the suit, and may make such order as it thinks fit
adjournment with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered* or sent* for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

* See Act VII of 1888, s 15.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced instead of attending personally to produce the same.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI as to proof of

service shall apply in the case of all summonses served under this section.

167. The service shall in all cases be made a sufficient time, before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Attachment
of property of
absconding wit-
ness.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court,* touching the non-service :

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door of house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170 ;

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness
appears attach-
ment may be
withdrawn.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if
witness fails to
appear.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be

* See Act VII of 1888, s. 16.

sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Court may of
its own accord
summon as wit-
nesses stran-
gers to suit

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons
summoned to
give evidence or
produce docu-
ment.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

Procedure when
witness appre-
hended cannot
give evidence or
produce docu-
ments

175. If any person failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—
 (a) within the local limits of its ordinary original jurisdiction, or

(b) Without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the Court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Consequence of refusal of party to give evidence when called on by Court.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Explanation.—The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

180. The other party shall then state his case and produce his evidence (if any).

Statement and production of evidence by other party.

Reply by party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be
examined in
open Court.

181.* The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge

182.† In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

How evidence
shall be taken
in appealable
cases.

* In Oudh substitute the following for ss. 181—190. —

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed and shall form part of the record of the case.

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down, to be interpreted to him in the language in which it was given.

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it

"If any question put to a witness be objected to by either of the parties and their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination

"If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record".—See Act XVIII of 1876, s. 19, and *supra*, s. 3.

† See footnote above.

‡ In the Central Provinces substitute the following for s. 182:—

"A note of the essential points of the evidence of each witness shall be made at the time, and in the course, of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case."—See Act II of 1879, s. 2, and *supra*, s. 3.

183.* If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

184.*† In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185.*‡ Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English, the Judge may so take it down with his own hand.

185A.† (1) The Local Government may, by notification in the official Gazette, direct, with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner prescribed in the foregoing sections, be taken down by him with his own hand in the English language.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

(3) Evidence taken down under sub-section (1) or sub-section (2) shall be in the form mentioned in section 182, and be read over and signed, and, as occasion may require, interpreted and corrected, as if it were evidence taken down under that section.

(4) The Local Government may, by notification in the official Gazette, revoke or vary a direction notified under sub-section (1).

186. § The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. § If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

* See footnote on preceding page

† Ss 184 and 185 have been repealed in the Central Provinces—see Act II of 1879, s. 2, and *supra*, s. 3.

‡ See Act VII of 1888, s. 17.

§ See footnote on p. 46.

Remarks on demeanour of witnesses 188 * The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189 *† In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Judge unable to make such memorandum to record reason of his inability.

190.*† If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191.†§ (1) When the Judge taking down any evidence, or causing any memorandum to be made, under this Chapter, is prevented by death, transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-section (1) shall apply, so far as they can be made applicable, to a suit transferred under section 25 :

Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

* See footnote on § 46.

† S. 189 has been repealed in the Central Provinces.—See Act II of 1879, s. 2, and *supra*, s. 3

‡ In the Central Provinces substitute the following for ss. 190 and 191 :—

“190. If the Judge is prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record

“191. When the Judge making a note of the evidence or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made.”—See Act II of 1879, s. 2, and *supra*, s. 3.

§ See Act VII of 1888, s. 18.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

* A Court continuing a suit under section 191 may recall and re-examine a witness who has departed in accordance with section 173.

CHAPTER XVI.

OF AFFIDAVITS.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable.

Provided that where it appears to the Court that either party *bona-fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

* See Act VII of 1888, s 19

Oath of declarant by whom to be administered

197. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in his behalf.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of Small Cause Courts

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue

Exception

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

206 The decree must agree with the judgment: it shall contain the contents of number of the suit, the names and descriptions of the decree parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid

If the decree is found to be at variance with the judgment, or if Power to any clerical or arithmetical error be found in the decree, amend decree. the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error:

Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

209.* When a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

+ Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

* See Act VII of 1888, s. 20 (1)

† See Act VII of 1888, s. 20 (2)

Decree may direct payment by instalments

210. In all decrees for the payment of money the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

Order, after decree, for payment by instalments

And after the passing of any such decree the Court may, on the application of the Judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

In suits for land Court may decree payment of *mesne-profits* with interest.

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or *mesne-profits* in respect of such property from the institution of the suit until the delivery of the possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

Explanation —“*Mesne-profits*” of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

212. When the suit is for the recovery of possession of immoveable property and for *mesne-profits* which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of *mesne-profits*, and dispose of the same on further orders.

213. When the suit is for an account of any property and for its Administration-suit. due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent ;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.*

Suit to enforce right of pre-emption 214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs.

Suit for dissolution of partnership 215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent 215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Decree when set-off is allowed 216 + If the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree as to sum awarded to defendant The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

‡ The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise.

Certified copies of judgment and decree to be furnished. 217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

* The rest of s 213 has been repealed by Act IV of 1886, s 2, which is in force in the Town of Mandalay—See Act XX of 1886, s. 6, and Sch. II, Pt II

† See Act VII of 1888, s. 21 (1).

‡ See Act VII of 1888, s. 21 (2).

CHAPTER XVIII.

OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the cost* of such application or may reserve the consideration of such costs for any future stage of the proceedings.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power :

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reason in writing

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A — Of the Court by which decrees may be executed.

223 A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

* See, read "costs."

- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto,

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed* in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes,* and the Court which passed it wishes to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court

224. The Court sending a decree for execution under section 223 shall send—

- (a) a copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and
- (c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

* See Act VII of 1888, s. 22

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Court receiving copies of decree, &c., to file same without proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Execution by High Court of decree transmitted by other Court

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court in executing decree

decree shall be

Appeal from orders in executing such decrees

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Decrees of Courts established by Government of India in Native States.

229. A decree of any Court established or continued* by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

229A.† So much of the foregoing sections of this Chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

Execution in British India of decrees of Courts of Native States.

229B‡. The Governor in Council may from time to time, by notification in the Gazette of India,—

* See Act VII of 1878, s. 23

† See Act VII of 1883, s. 24

‡ S. 229 B (formerly s. 434) has been transposed here by Act VII of 1883, s. 39 (1).

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established or continued* by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and

(b) cancel any such declaration

So long as such declaration remains in force the said decrees may be executed accordingly

B.—Of Application for Execution.

230 When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely) —

- (a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or
- (b) Where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

* See Act VII of 1888, s 39 (2)

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Provided as follows.—

- (a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution
- (b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others

233 Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder

If judgment-debtor die before execution, application may be made against his representative

234 If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

235. The application for the execution of a decree shall be in writing, verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely):—

Contents of application for execution of decree

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree,
- (f) whether any and what previous applications have been made for execution of the decree and with what result,
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded;

- (i) the name of the person against whom the enforcement of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

Application for attachment of moveable property to be accompanied with inventory

description of the same.

236 Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate

237 Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plants.

238 If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

Stay of Execution.

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto,

and, in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

•Power to require security from, or impose conditions upon, judgment-debtor.

Liability of judgment-debtor discharged to be retaken

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

Stay of execution pending suit between decree-holder and judgment-debtor.

240. Before passing an order under section 239 to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree

244. The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely) —

- (a) questions regarding the amount of any *mesne-profits* as to which the decree has directed inquiry ;
- (b) questions regarding the amount of any *mesne-profits* or interest which the decree has made payable in respect of the subject-matter of a suit between the date of its institution and the execution of decree, or the expiration of three years from the date of the decree ;
- (c)* any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof.

Nothing in this section shall be deemed to bar a separate suit for *mesne-profits* accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section

* See Act VII of 1888, s. 26 (1)

† See Act VII of 1888, s. 26 (2).

E.—Of the Mode of executing Decrees.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

Procedure on admitting application.

When the application is admitted the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application.

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Prohibition of arrest or imprisonment of women in execution of decree for money.

245A.* Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Discretionary power to permit other judgment-debtors to show cause against imprisonment.

245B.* (1) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

(2) If appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Cross-decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

* See Act VI of 1888, s. 2.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply unless—

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits ; and

the sums due under the decrees are definite.

Illustrations.

(a) A holds a decree against B for Rs. 1, 000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

Cross-claims under same decree. 247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party ; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed 248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him—

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made :

Provided that no such notice shall be necessary—

Proviso in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section, the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure. 249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit

Warrant when to issue. 250 When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall, subject to the provisions of sections 245A and 245B* issue its warrant for the execution of the decree.

Date, signature, seal and delivery. 251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Decree against representative of deceased for money to be paid out of deceased's property. 252 If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property.

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Decree against surety. 253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same, or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant :

* See Act VII of 1888, s. 3.

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

Decree for money. 254 Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both

Decree for mesne-profits or other matter, a amount of which to be subsequently ascertained. 255 If the decree be for *mesne-profits* or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000. 256 When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree. 257. All money payable under a decree shall be paid as follows (namely):—

- (a) into the Court whose duty it is to execute the decree ; or
- (b) out of Court to the decree-holder ; or
- (c) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor. 257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement for satisfaction of judgment-debt. Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt ; and the surplus, if any, shall be recoverable by the judgment-debtor.

Payment to decree holder. 258. If any money payable under a decree is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

*Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.

259 If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

* See Act VII of 1888, s. 27.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year, from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

Decree for execution of conveyances, or endorsement of negotiable instruments.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section, may be in the following form. "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

Form and effect of execution of conveyance by Court

Decree for immovable property.

263. If the decree be for the delivery of any immovable property, possession thereof shall be delivered over the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of immovable property when in occupancy of tenant

264. If the decree be for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the

warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property.

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the state or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

F.—Of Attachment of Property.

266.* The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf.

Provided that the following particulars shall not be liable to such attachment or sale (namely) :—

- (a) the necessary wearing-apparel and bedding of the judgment-debtor, his wife and children ;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists ;
- (d) books of account ;
- (e) mere rights to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;

* In Oudh so much of s. 266 as renders land liable to sale in execution of a decree is subject to the following restriction :—

No ancestral property in land shall be sold in satisfaction of a decree without the permission of the Chief Commissioner, no self-acquired property in land shall be so sold without the permission of the Commissioner.

Explanation—In this section the words "ancestral property" include the immoveable property of persons admitted to engagement for the land-revenue at the summary settlement of 1858-59.—See Act XVIII of 1876, s. 20, and *supra*, s. 3.

† See Act VII of 1888, s. 28 (1) and (2).

- (h)* the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—
- (i) the whole of the salary where the salary does not exceed twenty rupees monthly ;
 - (ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly, and
 - (iii) one moiety of the salary in any other case ;
- (i) the pay and allowances of persons to whom the Indian Articles of War apply ;
- (j) the wages of labourers and domestic servants ;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (l) a right to future maintenance ;
- (m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree ;
- (n) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses (g), (h), (i)§ (j) and (m)§ are exempt from attachment or sale whether before or after they are actually payable.

Provided also that nothing in this section shall be deemed—

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the Army Act, 1881, or any similar law for the time being in force.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons, of its own motion, shall declare the person on whose behalf the summons is so issued.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,—

Power to sum-
mon and ex-
amine persons
as to property
liable to be
seized.

Attachment of
debt, share and
other property
not in posses-
sion of judg-
ment debtor

* See Act VII of 1888, s. 28 (3)

† See Act XII of 1891

‡ See Act VII of 1888, s. 28 (4)

§ See Act VII of 1888, s. 28 (5)

- (a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court ;
- (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house and shall be served on the officer so required.

Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof.

Attachment of moveable property in possession of judgment-debtor.

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

PROVISO.

The local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Power to make rules for maintenance of attached live-stock.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be.

Provided that, if the room be in the actual occupancy of a woman who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until—

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders to give information The holder of any decree attached under this section shall be bound to give the Court executing the same such information and as may reasonably be required

Attachment of immoveable property 274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

Order for withdrawal of attachment after satisfaction of decree. 275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private alienation of property after attachment to be void 276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Court may direct coin or currency notes attached to be 277. If the property attached is coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part

paid to party
entitled

thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

278. If any
Investigation
of claims to, and
objections to
attachment of,
attached pro-
perty.

claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postpone-
ment of sale.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be
adduced by
claimant.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

280. If upon the said investigation the Court is satisfied that, for
Release of pro-
perty from at-
tachment.

the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

281. If the
Disallowance
of claim to re-
lease of property
attached.

the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance
of attachment
subject to claim
of incumbran-
cer.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Saving of
suits to estab-
lish right to
attached pro-
perty.

283. The party against whom an order under sections 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Power to order property attached to be sold and proceeds to be paid to person entitled receive the same

284. Any Court may order that any property which, has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to

Property attached in execution of decrees of several Courts

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

G.—Of Sale and Delivery of Property.

(a) GENERAL RULES.

Sales by whom conducted and how made

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

Proclamation of sales by public auction.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

- (a) the property to be sold ;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government ;
- (c) any incumbrance to which the property is liable ;
- (d) the amount for the recovery of which the sale is ordered ; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court.

• Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

288. No Judge or other public officer shall be answerable for any Indemnity of error, misstatement or omission in any proclamation Judges, &c under section 287, unless the same has been committed or made dishonestly.

289 The proclamation shall be made, in manner prescribed by Mode of making section 274*, and a copy thereof shall then be fixed proclamation up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without Time of sale the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

291. The Court may in its discretion adjourn any sale under this Power to adjourn sale chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment. Provided that when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every Stoppage of sale on tender of debt and costs, or on proof of payment such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

292. No officer having any duty to perform in connection with any sale under this chapter shall either Officers concerned in execution sales not to bid for or buy property sold directly or indirectly bid for, acquire or attempt to acquire any interest in any property sold at such sale.

293 The deficiency of price (if any which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, Defaulting purchaser answerable for loss by re-sale

* See Act VII of 1888, s. 29

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

Decree-holder
not to bid for
or buy property
without per-
mission

294 No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

If decree-
holder purchase,
amount of de-
cree may be
taken as pay-
ment

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Proceeds of ex-
ecution sale to be
divided rate-
ably among
decree-holders

Provided as follows

Proviso where
property is sold
subject to mort-
gage

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale.

(b) when any property* liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold.

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal money due on the incumbrance,

* This word "is" in s 295, cl (b), has here been omitted—see *Gazette of India*, 19th August 1882, Pt I, p 355.

thirdly, in discharging the interests and principal moneys due on subsequent incumbrances (if any) ; and
fourthly, rateably among the holders of decrees for money against the judgment-debtor who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(b) RULES AS TO MOVEABLE PROPERTY.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale ; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

299. When the property sold is a negotiable instrument or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from

making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect. — “*A. B.*, by *C. D.*, Judge of the Court of (or as the case may be); in a suit by *E. F.* against *A. B.*”

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchase or as he may direct; and such property shall vest accordingly.

(c) RULES AS TO IMMOVEABLE PROPERTY.

What Courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

Postponement of sale of land to enable defendant to raise amount of decree.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale.

Provided that all moneys payable under such mortgage, lease or sale shall be paid into Court and not to the judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expense of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

But no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

Application to
set aside sale on
ground of judg-
ment debtor
having no sale-
able interest.

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit.

Provided that no order to set aside a sale shall be made unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Confirmation of sale

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale set
aside, price to
be returned to
purchaser

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

Certificate to
purchaser of im-
moveable prop-
erty.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before.

Provided that the decree under which the sale took place was still subsisting at that date.

Bar to suit
against purchas-
er buying
benami.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of
immoveable prop-
erty in occu-
pancy of judg-
ment-debtor.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any

person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of
immoveable prop-
erty in occu-
pancy of tenant.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Power to pre-
scribe rules for
transferring to
Collector
execution of cer-
tain decrees.

320. The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to pre-
scribe rules as to
transmission, ex-
ecution and re-
transmission of
decrees.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

*Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders would be subject to appeal to and revision by appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

In executing a decree transferred to the Collector under this section the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII of 1850 (*an Act for the protection of Judicial Officers*).*

Power of Collector when execution of decree is so transferred.

321 When the execution of a decree has been so transferred, the Collector may—

- (a) proceed as the Court would proceed under section 305, or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold, or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of Collector when execution of decree is so transferred.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

- (a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the Court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of money - decrees to be ascertained

322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders

* See Act VII of 1858, s. 30.

ed, and immove-
able property
available for
their satisfac-
tion

or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of decision of Court as to dispute arising under section 322B or 322C

322D The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be as binding as, a decree.

Scheme for liquidation of money-decrees

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property, or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale ;

(2) raise such amount, and interest (notwithstanding any order under section 304)—

- (a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of, the said property ; or
- (b) by mortgaging the whole or any part of such property ; or
- (c) by selling part of such property ; or
- (d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or
- (e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which it deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Chief Controlling Revenue-authority.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor of his representative interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property, and, if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under

Recovery of balance, if any, after letting or management.

Collector to render accounts to Civil Court.

the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied,

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

Sales how to be conducted. 325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Provision where property is in several districts.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

When Court may authorize Collector to stay public sale of land.

327. The Local Government may, from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests

are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value :

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

Local rules as to sales of land in execution of decrees for money.

H.—Of Resistance to Execution.

328 If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

Procedure in case of obstruction to execution of decree

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

Procedure in case of obstruction by judgment-debtor or at his instigation.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Procedure when obstruction continues.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code, or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the

Procedure in case of person dispossessed of

property disput-
ing right of de-
cree-holder to
be put into pos-
session

ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and, if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

Transfer of prop-
erty by judg-
ment-debtor af-
ter institution
of suit.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which

Place of judg-
ment-debtor's
imprisonment.

the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned :

Proviso.

Provided as follows :—

- (a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise and no outer door of a dwelling-house shall be broken open ; but, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest .
- (b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But, if he fails so to apply, the Court may either direct the security to be realized or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

Warrant for
arrest to direct
judgment-debt-
or to be brought
up

337A.* (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

(2) Before making an order under sub-section (1) the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely.—

- (a) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account ;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;
- (c) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors ;
- (d) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it ;
- (e) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (b) of this sub-section.

(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

(4) A judgment-debtor released under this section may be re-arrested.

(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.

338. The Local Government may, from time to time, prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Scales of subsistence-allowances

* See Act VI of 1888, s 4.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

340 Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed—

341. The judgment-debtor shall be discharged from jail—

- (a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail, or
- (b) on the decree being otherwise fully satisfied; or
- (c) at the request of the person on whose application he has been imprisoned; or
- (d) on such person omitting to pay the allowance as hereinbefore directed; or
- (e) if the judgment-debtor be declared an insolvent as hereinafter provided; or
- (f) when the term of his imprisonment, as limited by section 342, is fulfilled.

Provided that, in the second, third, and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

342 No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

343 The officer entrusted with the execution of the warrant shall, on warrant
 Endorsement thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

Power to apply for declaration of insolvency. 344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application 345 The application, when made by the judgment-debtor, shall set forth—

- (a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody
- (b) the amount, kind and particulars of his property, and the value of any such property not consisting of money
- (c) the place or places in which such property is to be found,
- (d) his willingness to put it at the disposal of the Court
- (e) the amount and particulars of all pecuniary claims against him, and
- (f) the names and residences of his creditors, so far as they are known to or can be ascertained by him

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody

Subscription and verification of application 346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

347 The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense—

Service of
copy of applica-
tion and notice

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application.

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Power to
serve other
creditors

349. When the judgment-debtor is* in custody under the foregoing provisions of this Code, the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

Powers of
Court as to judg-
ment debtor under
arrest

350 On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge, and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Procedure at
hearing

Declaration of
insolvency and
appointment of
Receiver

351 If the Court is satisfied—

- (a) that the statements in the application are substantially true,
- (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed

* See Act VII of 1888, s. 21 (1).

the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time,

- (c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property,
- (d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or, if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

352 The creditors mentioned in the application, and the other
 Creditors to persons (if any) alleging themselves to be creditors of
 prove their the insolvent, shall then produce evidence of the amount
 debts the insolvent, shall then produce evidence of the amount
 and particulars of their respective pecuniary claims
 against him; and the Court shall by order determine the persons who
 have proved themselves to be the insolvent's creditors and their re-
 spectve debts; and shall frame a schedule of such
 Schedule to persons and debts; and the declaration under section
 351 shall be deemed to be a decree in favour of each of the said
 creditors for their said respective debts

A copy of every such schedule shall be stuck up in the Court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he was died before the insolvency, his legal representative, to prove in competition with the creditors of the firm

353 Any creditor of the insolvent who is not mentioned in such
 Applications schedule may apply to the Court for permission to pro-
 by unscheduled duce evidence of the amount and particulars of his pe-
 creditors. quinary claims against the insolvent, and, in case the
 applicant proves himself to be a creditor of the insolvent, for an order
 directing his name to be inserted in the schedule as a creditor for the
 debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

354. Every order under section 351 shall be published in the local official Gazette and *every order under that section appointing a Receiver shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

Receiver to give security and collect assets.

355 The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid ;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of Receiver. 356. The Receiver shall proceed under the direction of the Court—

- (a) to convert the property into money :
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government .
- (c) to pay the said decree-holder's costs .
- (d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property :
- (e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference :

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative :

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver ; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325, both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable ; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

* See Act VII of 1888, s 31 (2)

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

359. Whenever, at the hearing under section 350, it is proved that the applicant has—

- (a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust ;
- (b) fraudulently concealed, transferred or removed any property ; or
- (c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal,

or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

360.* The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Court by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344

† A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court.

360A.‡ Nothing in this chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras or Bombay.

Inapplicability of this chapter to Presidency towns

* See Act XIV of 1885, s. 3.

† See Act VII of 1888 s. 31 (3)

‡ See Act VII of 1888, s. 31 (4)

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

No abatement
by party's death,
if right to sue
survives

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Illustrations.

(a) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. The right to sue survives to C, and the suit does not abate.

(b) In the same case as the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c) A sues B for libel. A dies. The right to sue does not survive and the suit abates.

(d) A, a member of a Hindu joint-family under the Mitakshara law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure
where one of se-
veral plaintiffs
dies and right to
sue does not sur-
vive to surviv-
ing plaintiffs
alone

363.* If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit.

Procedure in
case of death of
sole, or sole sur-
viving, plain-
tiff.

365.† In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.

* S. 363 has been substituted for the original ss 363 and 364 by Act VII of 1888, s. 32 (1).

† S. 365 has been substituted by Act VII of 1888, s. 32 (2).

366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff; or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit, for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

368. If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court

that he had sufficient cause for not making the application within such period.

*The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal, and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

372. In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or

Application to set aside abatement or dismissal.

Procedure in case of assignment pending suit

against the person to whom such interest has come either in addition, to or in substitution for the person from whom it has passed, as the case may require.

Power for Court to extend period of limitation prescribed for certain applications.

372A.* The provisions of section 5 of the Indian Limitation Act, 1877, applicable to appeals shall apply to applications under sections 365, 366, 368 and 371.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

373. If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suits

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

Deposit by defendant of amount in satisfaction of claim.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court sum of money as he considers a satisfaction in full of the claim

* Added by Act VII of 1888, s 32 (4)

Notice of deposit 377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice. 378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts deposit as satisfaction in part. If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in Illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, when security for costs may be required from plaintiff at any stage of suit

either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

*On the application of any defendant in a suit for money in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373, for show good cause why such time should be extended, in which case the Court may extend it.

Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

The provisions of the Indian Limitation Act, 1877, with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application, shall apply, so far as they can be made applicable to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application, respectively.†

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

383. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

Cases in which Court may issue commission to examine witness

* Added by Act VI of 1888, s. 5.

† This part of s. 381 has been added by Act VII of 1888, s. 33.

384. Such order may be made by the Court either of his own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose examination commission may issue

386. Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in Court ; and
- (c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may, subject to any rules of the High Court in this behalf, thinks fit to appoint *

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court

Commission to examine witness not within British India

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order ; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

* These words in s 386 have been substituted by Act VII of 1888, s 34.

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Court

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by—

- (a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with Her Majesty.

B—Commissions for local Investigations.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne-profits*, or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court :

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court

The report of the Commissioner and the evidence taken by him, (but not the evidence without the report) shall be evidence in the suit and shall form part of the record ; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit

Commissioner may be examined in person

C.—Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

Court to give Commissioner necessary instructions.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

Court to receive Commissioner's proceedings or direct further inquiry.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

D.—Commission to make Partition.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Commission to make partition of non-revenue-paying immoveable property.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of Commissioners.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

E.—General Provisions.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a

Expenses of commission to

be paid into Court time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners. 398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;
- (b) call for and examine documents and other things relevant to the subject of enquiry ;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section the Commissioner shall be deemed to be a Court of Civil Judicature.

Court to direct parties to appear before Commissioner.

400 Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders

Procedure *ex parte*

If the parties do not so appear the Commissioner may proceed *ex parte*.

PART III. OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI SUITS BY PAUPERS.

Suits may be brought in forma pauperis.

401 Subject to the following rules, any suit may be brought by a pauper.

Explanation—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

What suits expected.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaintiffs in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaintiffs.

404. Notwithstanding anything contained in section 38, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission. When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

407. If it appear to the Court—
 (a) that the applicant is not a pauper, or
 (b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or
 (c) that his allegations do not show a right to sue in such Court, or
 (d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,
 the Court shall reject the application.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the ap-

applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and, if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

- (b) if it appears that his means are such that he ought not to continue to sue as a pauper ; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

Costs

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by or
against Secre-
tary of State in
Council.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Persons
authorized to
act for Govern-
ment.

417. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Plaints in
suits by Secre-
tary of State in
Council

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

419. *The Government Pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the complaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Attendance
of person able to
answer ques-
tions relating to
suit against Go-
vernment.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Where
Service on pub-
lic officers.

422. Where a defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of

* See Act VII of 1888, s. 35.

being served on him, if it appear to the Court that the summons may be most conveniently so served.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel ;

and the Court upon such application may extend the time for so long as appears to be requisite.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff and the relief which he claims ; and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in such suits.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree

* See Act VII of 1888, s. 36.

Government or public officer within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

430. Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue. may sue in the Courts of British India as if they were subjects to Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue 431. A foreign State may sue in the Courts of British India:

Provided that—

- (a) it has been recognized by her Majesty or the Governor General in Council, and
- (b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of

* See Act VII of 1888 s. 37.

all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

A person appointed under this section may authorize or appoint persons to make and do appearances, applications and acts in any such suit or suits as if he were himself a party to the suit or suits.

433.* (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such possession or for money charged on that property.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

434 † A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his state :

Style of Princes and Chiefs as parties to suits.

Provided that in giving the consent referred to in the last foregoing section the Governor General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

* See Act VI of 1888, s. 28

The last two paras of s. 432 have been added by Act VII of 1888, s. 37 (2)

† S. 434 has been newly inserted, and the former s. 434 has become s. 229B (*supra*)—see Act VII of 1888, ss. 39 and 40

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

- (a) by leaving it at the registered office (if any) of the Corporation or Company, or
- (b) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or
- (c) by giving it to any director, secretary or other principal officer of the Corporation or Company ;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

437. In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of ex-
ecutors and ad-
ministrators

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them :

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of
married execu-
trix not to join.

493. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must sue by next friend. 440. Every suit, by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Costs. *If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court, granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.

Applications to be made by next friend or guardian *ad litem*. 441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

Plant filed without next friend to be taken off file. 442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant, and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

Guardian *ad litem* to be appointed by Court. 443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

*Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.

Order obtained without next friend or guardian may be discharged. 444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party

* Added by Act VIII of 1890, s 58

Costs. at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor and he is not a defendant in the suit

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal, and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

*If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Application for appointment of new next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Stay of proceedings on death or removal of next friend

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Course to be followed by minor plaintiff or applicant on coming of age

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Where he elects to proceed

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus :—

“ *A. B.*, late a minor, by *C. D.*, his next friend, but now of full age ”

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Costs.

Making an d proving applica- tions under sec- tions 451, 452.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age

When minor co- plaintiff coming of age desires to repudiate suit.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff, and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit un- reasonable or improper.

Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Petition for ap- pointment of guardian . *ad item.*

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed

Who may be guardian *ad item.*

458. If the guardian neglecting his duty may be moved. do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Costs

Appointment in place of guardian dying *pendente lite*.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Guardian *ad litem* of minor representative of deceased judgment-debtor

460. When the enforcement of a decree is applied for against the heir or representative, being a minor of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Receipt by next friend or guardian *ad litem* of property under decree for minor.

*461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Next friend or guardian *ad litem* not to compromise without leave of Court.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Compromise without leave voidable.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Application of sections 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force.

*464. Nothing in this Chapter applies to a Sovereign Prince or ruling Chief suing or being sued, in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an

Princes and Chiefs and wards of Court

agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

Officers or soldiers, who cannot obtain leave may authorize any person to sue or defend for them.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation—In this chapter the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or depôt to which the officer or soldier belongs.

Person so authorized may act personally or appoint pleader

466 Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorized, or on his pleader, to be good service

or on his pleader.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person

Service on officers and soldiers.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station or military bázár, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

CHAPTER XXXIII.

INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

Plant in such suit 471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for a plaint, state—

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
- (b) the claims made by the defendants severally ; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing. 473. At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ;
- or, if it thinks that justice or convenience so require,
- (b) retain all parties until the final disposal of the suit .

and, if it finds that the admissions of the parties or other evidence enable it,

- (c) adjudicate the title to the thing claimed, or else it may
- (d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

When agents
and tenants
may institute
interpleader-
suits.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

474. When the suit is properly instituted the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him, and his costs in the suit so stayed may be provided for in such suit: but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Charge of
plaintiff's costs.

Procedure
where defend-
ant is suing
stakeholder

Costs.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

When plain-
tiff may apply
that security be
taken

477. If at any stage of any suit, other than a suit for the possession of immovable property, the plaintiff satisfies the Court by affidavit or otherwise,

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,—

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,—

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the

surety to be discharged, from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to give security or find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree :

Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided that no person shall be detained in prison under this section after he has complied with such order.

Subsistence of defendants arrested.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtor shall apply to all defendants arrested under this chapter.

B.—Attachment before Judgment.

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, specify the contents of property required to be attached and the estimated value thereof.

484. If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same,* or such portion thereof as

Court may call on defendant to furnish security or show cause.

* In s. 484 "same" has been substituted for "sum"—See Act XII of 1891, Sch 41

may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

Investigation of claims to property attached before judgment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Removal of attachment when security furnished or suit dismissed

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property attached under chapter not to be re-attached in execution of decree.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

C.—Compensation for improper Arrests or Attachments.

Compensation for obtaining arrest or attachment on insufficient grounds.

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

Cases in which temporary injunction may be granted

492. If in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience an injunction granted under this section or section 492, may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both:

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to that plaintiff such compensation as it thinks fit and may pay the balance, if any, to the defendant.

Before granting injunction, Court to direct notice to opposite party.

Injunction to Corporation binding on its members and officers.

Order for injunction may be discharged, varied or set aside

Compensation to defendant for issue of injunction on insufficient grounds.

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to make order for detention, &c., of subject-matter,

and to authorize entry, taking of samples and experiments.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

496. Any order for an injunction may be discharged, or varied, or set aside by Court, on application made thereto by any party dissatisfied with such order.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(a) make an order for the detention, preservation or inspection of any property being the subject of such suit ;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit ; and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court,) be put in immediate possession of land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

503. Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable or immovable, the subject of a suit or under attachment, the Court may by order—

(a) appoint a Receiver of such property, and, if need be,

- (b) remove the person in whose possession or custody the property may be from the possession or custody thereof ;
- (c) commit the same to the custody or management of such Receiver ; and
- (d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, *as the Court thinks fit,* and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has or such of those powers as the Court thinks fit.

Receiver's habi-
tues.

Every Receiver so appointed shall—

- (e) give such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;
- (f) pass his accounts at such periods and in such form as the Court directs ,
- (g) pay the balance due from him thereon as the Court directs ; and
- (h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector,† the Court may, with the consent of the Collector, appoint him to be Receiver of such property.

Courts empow-
ered under this
chapter 6. 505 The powers conferred by this chapter shall be exercised only by High Courts and District Courts :

Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

* These words in cl (d) of s 503 have been inserted by Act VII of 1888, s. 42.

† These words in s. 504 have been substituted by Act VII of 1888, s. 43.

PART V. OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,—

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies or refuses or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place

of the person so dying or refusing or neglecting or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire, and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of
arbitrator or
umpire appointed
under sections
509, 510,
511

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

When umpire
may arbitrate in
lieu of arbitra-
tors.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) when they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

517. Upon any reference by an order of the Court the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the

state special form of a special case for the opinion of the Court ;
 case and the Court shall deliver its opinion thereon ; and
 such opinion shall be added to and form part of the award.

Court may, on application, modify or correct award in certain cases 518. The Court may, by order, modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

When award or matter referred to arbitration may be remitted. 520. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrators or umpire, upon such terms as it thinks fit—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;
- (b) where the award is so indefinite as to be incapable of execution ;
- (c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it.
 Grounds for setting aside award. But no award shall be set aside except on one of the following grounds (namely) .—

- (a) corruption or misconduct of the arbitrator or umpire ;
 - (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire .
 - (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit ;
- and no award shall be valid unless made within the period allowed by the Court.

Judgment to be according to award. 522 If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

523. When any persons agree in writing, that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such as is mentioned or referred to in section 520 or section 521 be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

- Power to state case for Court's opinion
- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or
 - (b) some property, moveable or immoveable, specified in the agreement shall be delivered by one of the parties to the other of them; or
 - (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

When value of subject-matter must be stated

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

Agreement to be filed and numbered as suit.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Parties to be subject to Court's jurisdiction.

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

Hearing and disposal of case

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them, and
 - (b) that they have a *bond fide* interest in the question stated therein.
- and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies all suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and, in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation—This section is not confined to cases in which the bill, hundi or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the sum-

mons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

535. In any proceeding under this chapter the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Power to order bill, &c., to be deposited with officer of Court.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

Procedure in suits under chapter

538. Sections 532 to 537 (both inclusive) apply only to—

Application of chapter.

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Court of the Recorder of Rangoon;
- (c) the Courts of Small Causes in Calcutta, Madras and Bombay;
- (d) the Court of the Judge of Karachi; and
- (e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General acting *ex officio*, or two or more persons *having an interest* in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High

When suits relating to public charities may be brought.

* These words in s. 539 have been substituted by Act VII of 1888, s. 44.

Court or the District Court, within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust ;
 - (b) vesting any property in the trustees under the trust ;
 - (c) declaring the proportions in which its objects are entitled ;
 - (d) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged ;
 - (e) settling a scheme for its management ;
- or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

(The last paragraph has been repealed by Act XII of 1891).

PART VI. OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

*An appeal may lie under this section from an original decree passed *ex parte*.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative ; and such grounds shall be numbered consecutively.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant :

* Added by Act VII of 1888, s 45.

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the Court or be amended then and there.

When the Court rejects under this section any memorandum it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants as the case may be.

Of staying and executing Decrees under Appeal.

Execution of decree not stayed solely by reason of appeal

545 Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree, but the Appellate Court may for sufficient cause order the execution to be stayed

Stay of execution of appealable decree before time for appealing has expired

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing thereon, the Court which passed the decree may for sufficient cause order the execution to be stayed

Provided that no order shall be made under this section unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court,

Security in case of order for execution of decree appealed against.

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

No such security to be required from Government or public officers

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal

Register of appeals

Such book shall be called the Register of Appeals.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Appellate Court may require appellant to give security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property (if any) to which the appeal relates.

When appellant resides out of British India

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

*If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Copies of exhibits in Court whose decree appealed against.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

551.* (1) The Appellate Court, if it thinks fit, may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made and without serving notice on the respondent or his pleader.

(2) If, on the day fixed under sub-section (1) or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

(3) The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is made.

552. † Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

* See Act VII of 1888, s. 47 (1).

† See Act VII of 1888, s. 47 (2).

Dismissal of appeal for appellant's default.

Hearing appeal *ex parte*.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost

the appeal be dismissed.

Proviso

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

558. If an appeal be dismissed under *section 551, sub-section (2),* section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal, and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

561.† Any respondent, though he may not have appealed against any part of the decree may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed the objection in the Appellate Court within one month from the date of the service on him

*. * These words have been added by Act VII of 1888, s. 47 (3).

† See Act VII of 1888, s. 48

or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of notice,
and provisions
applicable
thereto

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

*Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent

*The provisions of Chapter XLIV shall, so far as they can be made applicable, apply to an objection under this section.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order, remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to readmit the suit under its original number in the register and proceed to determine the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded

When further
evidence barred

563. *Rep. by Act VII of 1888, s. 50.*

Limit to re-
mand

564 The Appellate Court shall not remand a case for a second decision, except as provided in section 562

565.† When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after settling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

566.‡ If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required ;

When Appellate
Court may
frame issues
and refer them
for trial to
Court whose de-
cree appealed
against

* See Act VII of 1888, s. 49 (1)

† This word in s. 565 has been substituted by Act VII of 1888, s. 51.

‡ See Act VII of 1888, s. 52.

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence.

Finding and evidence to be put on record

Objections to finding

Determination of appeal

Production of additional evidence in Appellate Court

567. Such finding and evidence shall become part of the record in the suit, and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for* any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Points to be defined and recorded.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the

Judgment when and where pronounced.

Language of judgment.

Translation of judgment.

* See Act XII of 1891, Schedule II.

translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Contents of judgment 574 The judgment of the Appellate Court shall state—

- (a) the points for determination ;
- (b) the decision thereupon ;
- (c) the reasons for the decision ; and
- (d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled,

Date and signature and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Decision when appeal heard by two or more Judges. 575 When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section

Dissent to be recorded 576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same

What judgment may direct 577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction 578. No decree shall be reversed or substantially varied nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

Of the decree in Appeal.

Date and contents of decree 579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it.

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

582.* The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V; and, in

Chapter XXI, so far as may be, the word "plaintiff" shall be held to include a plaintiff-appellant or defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

The provisions hereinbefore contained, including those of section 372A, shall apply to appeals under this chapter so far as such provisions are applicable.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

Execution of decree of Appellate Court.

* See Act VII of 1888, s. 53.

CHAPTER XLII.*

OF APPEALS FROM APPELLATE DECREES.

584 † Unless, when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely).—

- Grounds of second appeal. (a) the decision being contrary to some specified law or usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

† An appeal may lie under this section from an appellate decree passed *ex parte*

Second appeal on no other grounds. 585. § No second appeal shall* lie except on the grounds mentioned in section 584.

586. || No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

No second appeal in certain suits.

587. The provisions contained in Chapter XLI shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

Provisions as to second appeals

* Chap XLII has been repealed in Ajmere and Merwara—see Reg. I of s. 2 and sch, and *supra*, s. 3

† In the Andaman and Nicobar Islands substitute the following for s. 584 —“Unless when otherwise provided by this Code or by any other law from all decrees passed in appeal by any Court subordinate to the High Court, reversing or modifying the decision of the Court of original jurisdiction on a point material to the merits of the case, an appeal shall lie to the High Court, if it appears to that High Court, on a perusal of the ground of appeal and of copies of the judgments of the Courts below, that a further consideration of the case is requisite for the ends of justice.”—See Reg. I of 1884, s. 4

‡ Added by Act VII of 1888, s. 54

§ In Coorg add to s. 585 —“Provided that in any case in which the decision of the Court of the Commissioner or Assistant Commissioner passed in appeal reverses or modifies the decree or order of the Court of original jurisdiction and is not declared by any law for the time being in force to be final, the Court of the Judicial Commissioner may admit a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice.”—See Reg. I of 1885, s. 9

|| In Coorg substitute for the word “five” in s. 586 “three”, and add to the same section —“Provided that the Court of the Judicial Commissioner may admit a second appeal in such suits when the amount or value exceeds one hundred rupees, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice.”—See Reg. I of 1885, s. 9.

In the Andaman and Nicobar Islands, s. 586 has been repealed.—See Reg. I of 1884, s. 4.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appeal- 588. An appeal shall lie from the following orders
able under this Code, and from no other such orders —

- (1) orders under section 20, staying proceedings in a suit ;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant ,
- (3) orders under section 36 or section 66, directing that a party shall appear in person ;
- (4) orders under section 44, adding a cause of action ;
- (5) orders under section 47, excluding a cause of action ;
- (6) orders returning plaints for amendment or to be presented to the proper Court ;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another ,
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit ;
- (9) orders rejecting applications under section 108 for* an order to set aside a decree *ex parte* ,
- (10) orders under sections 113, 120 and 177 ;
- (11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees ;
- (12) orders under sections 143 and 145, directing anything to be impounded ;
- (13) orders under section 162, for the attachment and sale of moveable property ,
- (14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property ;
- (15) orders under section 261, as to objections to draft-conveyances or draft-endorsements ;
- (16) orders under section 294, † and orders under† section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property ;
- (17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357 ;
- (18) orders under section 366, paragraph two, section 367 or section 368 :
- (19) orders rejecting applications under section 370 for dismissal of a suit ;
- (20) orders under section 371, refusing to set aside the abatement or dismissal of a suit ;
- (21) orders disallowing objections under section 372 ;
- (22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs ;

* The word " for " in cl. (9) of s. 588 has been substituted by Act VII of 1888, s. 55 (1).

† These words in cl. (16) of s. 588 have been substituted by Act VII of 1888, s. 55 (2).

- (23) orders in interpleader-suits under section 473, clause (a), (b) or (d), section 475 or section 476 ;
- (24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503 ;
- (25) orders under section 514, superseding an arbitration ;
- (26) orders under section 518, modifying an award ;
- (27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal ,
- (28) orders under section 562, remanding a case ;
- (29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

589.* When an appeal from any order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

+Provided that an appeal from an order specified in section 588, clause (17), shall lie—

(a) to the District Court where the order was passed by a Court subordinate to that Court, and

(b) to the High Court in any other case

590 The procedure prescribed in Chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided

No other appeal from orders, but error therein may be set forth in memorandum of appeal against decree.

591. Except as provided in this Chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction ; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

CHAPTER XLIV.

OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable .

* The first para. and the word "other" in the second para. of s. 589, repealed by Act VII of 1888, s. 56, have been omitted.

† Added by Act X of 1888, s. 3.

Procedure on application for admission of appeal
 Provided that the Court shall reject the application, unless upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

593 The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this Chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,
 When appeals lie to Queen in Council
 an appeal shall lie to Her Majesty in Council—

- (a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction ;
- (b) from any final-decree passed by a High Court in the exercise of original civil jurisdiction, and
- (c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter 596 In each of the cases mentioned in clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance, must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and, where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals 597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and

twenty-fifth of Victoria, Chapter 104, or of One Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being,

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application to
Court whose
decree com-
plained of.

598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

Time within
which applica-
tion must be
made

599. *Rep. by Act VII of 1888, s. 57.*

600 Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of re-
fusal of certi-
ficate

601. If such certificate be refused, the petition shall be dismissed :

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable* to the High Court to which the former Court is subordinate.

Security and
deposit required
on grant of cer-
tificate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date—

- (a) give security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except—
 - (1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being ;
 - (2) papers which the parties agree to exclude ;
 - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

* See Act VII of 1888, s. 57

- (4) such other documents as the High Court may direct to be excluded.

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may—

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation of acceptance of security.

604. At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to order further security or payment.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

Refund of balance of deposit.

608. Notwithstanding the admission of any appeal under this Chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

Powers of Court pending appeal.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

609. If at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And, if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply, by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

*In so far as the order awards costs to the respondent, it may be executed against a surety therefor, to the extent to which he has rendered himself liable, in the same manner as it may be executed against the appellant;

* Added by Act VII. of 1888, s. 58.

*Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600 ;
 - (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court ;
 - (c) the amount and nature of the security required under sections 602, 605 and 609 ;
 - (d) the testing of such security ;
 - (e) the estimate of the cost of transcribing the record ;
 - (f) the preparation, examination and certifying of such transcript ;
 - (g) the revision and authentication of translations ;
 - (h) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;
 - (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council ;
- and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

614. In sections 595 and 612, the expression "High Court" shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction of Bengal Regulation III of 1828, section 4, clause 5.

Saving of Her Majesty's pleasure,

appeals to

and of rules for conduct of business before Judicial Committee—

615. The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

616. Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting ap-

peals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial

Committee of the Privy Council, and for the time

being in force, for the presentation of appeals to

Her Majesty in Council, or their conduct before

the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

617. If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, Reference of question to High Court. to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and Court may pass decree contingent upon opinion of High Court. may pass a decree or order contingent upon the opinion of the High Court on the point referred ;

but no execution shall be issued, property sold or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the Judgment of High Court to be transmitted, and case disposed of accordingly.

receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Power to alter, &c., decrees of Court making reference.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to call for record of cases not appealable to High Court.

622 * The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT

Application for review of Judgment.

623. Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred ;
 (b) by a decree or order from which no appeal is hereby allowed ; or
 (c) by a judgment on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

* In the Andaman and Nicobar Islands substitute the following for s 622 —

"The High Court may call for the record of any proceeding of a Court subordinate to it, and, if it appears that there has been in the proceeding an error material to the merits of the case, may pass such judgment or order thereon as it thinks fit"—See Reg I of 1884, s. 4.

In the Punjab s 622 is to be read subject to the omission of the words "illegally or" and subject to the modification that for the purposes of the section no appeal shall be deemed to lie from the appellate decree of a Divisional Court to the Chief Court in certain cases,—see Act XVIII of 1884, s 70 Section 70 of Act XVIII of 1884 has however been repealed in so far as regards Revenue Courts by Act XVI of 1887 s. 3 and sch

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

To whom applications for review may be made

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Form of applications for review.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion.

Application when rejected.

Application when granted.

Provided that—

- (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree, a review of which is applied for; and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation; and
- (c) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor.

Proviso.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such

Application for review in Court consisting of two or more Judges.

Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

628 If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

629. An order of the Court for rejecting the application shall be final; but, whenever such application is admitted, the admission may be objected to on the ground that it was—

- (a) in contravention of the provisions of section 624,
- (b) in contravention of the provisions of section 626, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

630 When an application for a review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

Chapter to apply only to certain High Courts.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Application of Code to High Courts

632. Except as provided in this chapter the provisions of this Code apply to such High Courts.

High Court to record judgments according to its own rules.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

Power to order execution of decree before ascertainment of costs, and

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as

relates to the costs ;

execution for costs subsequently.

and, as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Unauthorized persons not to address Court.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule on order, from time to time, directs.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum ;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to
affect High
Court in exer-
cise of insolvent
jurisdiction

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

Exemption of
certain women
from personal
appearance.

640. Women, who according to the customs and manners, of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process* in any case in which the arrest of women is not prohibited by this Code.*

Local Govern-
ment may ex-
empt certain
persons from
personal appear-
ance

641 The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

The names and
residences of the
persons ex-
empted to be
kept in Courts.

642 No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

Costs of com-
mission render-
ed necessary by
claiming privi-
lege.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Persons exempt
from arrest un-
der civil process

642 No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

And, except as provided in section 337A, sub-section (5), and sections 256 and 643,† where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while

. These words in s. 640 have been added by Act VI of 1888, s. 6.

†-† This part of s. 642 has been substituted by Act VI of 1888, s. 7.

going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When in a case pending before any Court there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 403, section 471, section 474, section 475, section 476 or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Courts. Court until the Local Government, otherwise orders ;

but it shall be lawful for the Local Government, from time to time, to declare what language shall be the language of every such Court

645A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may, by rule, from time to time, direct, two competent assessors, and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge ; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

646A.* (1) If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

Power to refer to High Court questions as to jurisdiction in small causes.

(2) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

646B.* (1) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

(2) On receiving the record and statement the High Court may pass such order in the case as it thinks fit.

(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Miscellaneous proceedings.

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

Admission of affidavits as evidence.

648. Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure when person to be arrested or property to be attached is outside district.

* Ss. 646A and 646B have been inserted by Act VII of 1888, s. 60.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment :

*and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him *

†Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.†

Rules applicable to all civil process for arrest, sale or payment

649. The rules contained in Chapter XIX shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding

In the same chapter the expression "Court which passed a decree," or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

650. The provisions of Chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Application of rules as to witnesses.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts in British India and served as if they had been issued by such Courts : Provided that the Courts issuing

Service of foreign summonses.

*. This para in s 648 has been substituted by Act VII of 1888, s. 61 (1).

†. The last para. of s. 648 has been added by Act VII of 1888, s. 61 (2).

such summonses have been established *or continued* by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

Penalty for resisting apprehension or escaping from custody under Code or civil process

651. *Rep. by Act X of 1886, s. 24(2)†*

652. The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law

† A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure

Release on ground of illness of judgment-debtor. 653 § (1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued

(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment

(3) When a judgment-debtor has been committed to jail he may be released therefrom—

(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be.

* These words in s. 650A have been inserted by Act VII of 1888, s. 62

† S. 24 of Act X of 1886 is in force in Upper Burma generally, excepting the Shan States—see Act XX of 1886, s. 6 and Sch. II, Pt. I

‡ The second para. of s. 652 has been added by Act VII of 1888, s. 63.

§ S. 653 has been added by Act VI of 1886 s. 8.

THE FIRST SCHEDULE.

(See section 3)

ACTS REPEALED

Number and year	Subject or title	Extent of repeal.
X of 1877	The Code of Civil Procedure.	So much as has not been repealed.
XII of 1879	Amending Act X of 1877, &c.	Sections 1 to 103 (both inclusive).
VII of 1880	Merchant Shipping ...	Section 85.

THE SECOND SCHEDULE.

(See section 5)

CHAPTERS AND SECTIONS OF THIS CODE EXTENDING TO PROVINCIAL COURTS OF SMALL CAUSES.

PRELIMINARY Sections 1, 2, 3 and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44 rule 1.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

* The entry, referring to Chapter VIII, has been amended, and that referring to Chapter XVI inserted by Act IX of 1887, s. 29.

THE SECOND SCHEDULE—*continued.*

Chapters and sections of this Code extending to Provincial Courts of Small Causes—continued.

CHAPTER XV—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

CHAPTER* XVI—Of Affidavits

CHAPTER XVII—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

CHAPTER XVIII—Sections 220, 221 and 222, of Costs

CHAPTER† XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive)

CHAPTER XX—Section 360, Power to invest certain Courts with insolvency-jurisdiction.

CHAPTER XXI—Of the Death, Marriage and Insolvency of Parties

CHAPTER XXII—Of the Withdrawal and Adjustment of Suits

CHAPTER XXIII—Of Payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs

CHAPTER XXV.—Of Commissions

CHAPTER XXVI—Suits by Paupers.

CHAPTER XXVII—Suits by and against Government or Government Servants.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

CHAPTER XXIX—Suits by and against Corporations and Companies

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

* The entry, referring to Chapter VIII, has been amended, and that referring to Chapter XVI inserted by Act IX of 1887, s. 26

† The entries referring to Chapters XIX, XLVII and XLIX have been amended by Act-IX of 1887, s. 26

THE SECOND SCHEDULE—*concluded*

Chapters and sections of this Code extending to Provincial Courts of Small Causes—concluded

- CHAPTER XXXI—Suits by and against Minors and Person of unsound Mind.
 CHAPTER XXXII—Suits by and against Military Men.
 CHAPTER XXXIII—Interpleader.
 CHAPTER XXXIV—Of Arrest and Attachment before Judgment, except as regards Immoveable Property.
 CHAPTER XXXVI—Appointment of Receivers
 CHAPTER XXXVII—Reference to Arbitration, sections 506 to 526 (both inclusive)
 CHAPTER XXXVIII—Of proceedings on Agreement of Parties
 CHAPTER XLVI—Reference to and Revision by High Court.
 CHAPTER* XLVII.—Of Review of Judgment, sections 623, 626 and 630.
 CHAPTER* XLIX—Miscellaneous.

 THE THIRD SCHEDULE.

(See section 7).

Bombay Enactments

THE FOURTH SCHEDULE.

(See section 644).

FORMS OF PLEADINGS AND DECREES.

A.—PLEADINGS. PART I.

No 1

FOR MONEY LENT.

IN THE COURT OF _____, AT
Civil Suit No. _____.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, he lent the defendant _____ rupees repayable on demand [or on the _____ day of _____].
 2. That the defendant has not paid the same, except rupees paid on the _____ day of _____ 18____.
- If the plaintiff claims exemption from any law of limitation, say :—*
3. The plaintiff was a minor [or insane] from the _____ day of _____ till the _____ day of _____.
 4. The plaintiff prays judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____ 18____.

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted].

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title).

A. B. and *G. H.*, the above-named plaintiffs, state as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant received _____ rupees [or a cheque on the _____ Bank for _____ rupees] from one *E. F.* for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____ 18____.

No 5.

(Title).

1. That on the _____ day of _____ 18____, at _____, at the request [or by the authority] of the defendant, the plaintiff paid to one *E. F.* _____ rupees.

3 That [on the day of 18, the plaintiff
demanded payment of the same from the defendant, but] he has not
paid the same

[NOTE —If the request* or authority is implied, the plaint should state facts raising the implication].

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title).

1. That on the day of 18 , at
 E F, of , deceased, sold and delivered to the defend-
 ant [one hundred barrels of flour *or*, the good mentioned in the
 schedule hereto annexed *or*, sundry goods].

2. That the defendant promised to pay the said goods on delivery or, on the day of rupees for some day before the plaint was filed.]

3. That he has not paid the same.

4. That the said *E F*, in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 18 , the said *E. F.* died.

6. That on the . day of probate of the said will was granted to the plaintiff by the Court of .

7. The plaintiff as executor as aforesaid."

[Demand of judgment].

[NOTE —If a day was fixed for payment, it should be stated as furnishing a date for the commencement of interest]

THE FOURTH SCHEDULE—*continued.*

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title).

A B, the above-named plaintiff, states as follows —

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [sundry articles of house-furniture] but no express agreement was made as to the price.
2. That the same were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment].

{NOTE —The law implies a promise to pay so much as the goods are reasonably worth}.

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST
AT A FIXED PRICE.

(Title).

A B, the above-named plaintiff, state as follows :—

1. That on the day of 18 , at , plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the same to one E F.
- 2 That the defendant promised to pay to the plaintiff rupees therefor
3. That he has not paid the same

[Demand of judgment]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TRASTATOR WITHOUT HIS EXPRESS REQUEST. AT A REASONABLE PRICE.

(Title).

A B, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff furnished to [Mary Jones], the wife of [James Jones], deceased, at her request, sundry articles of [food and clothing], but no express agreement was made as to the price
- 2 That the same were necessary for her.
3. That the same were reasonably worth rupees.
- 4 That the said James Jones refused to pay the same
- 5 That the defendant is the executor of the last will of the said James Jones.

[Demand of judgment].

THE FOURTH SCHEDULE.—*continued.*

No 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title).

A. B., the above-named plaintiff, states as follows:—

1 That on the day of 18 , at , the plaintiff sold to E. F., of , deceased [*all the crops then growing on his farm in*].

2 That the said E. F. promised to pay the plaintiff rupees for the same

3 That he did not pay the same.

4 That the defendant is administrator of the estate of the said E. F.

[Demand of judgment].

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , E. F., of sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5 The plaintiff as committee as aforesaid [*Demand of judgment*].
[NOTE.—When the lunatic's estate is not subject to the ordinary Original Jurisdiction of a High Court, for paragraphs 4 and 5, substitute the following—]

4 That on the day of the Civil Court of duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff Manager of his estate.

5. The plaintiff as Manager as aforesaid [*Demand of judgment*]

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title).

A. B., the above-named plaintiff, states as follows:—

1 That on the day of 18 , at , E. F., of , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said E. F. should pay for the same upon the delivery thereof rupees.

THE FOURTH SCHEDULE—*continued.*

2 That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not accepted the said goods or paid for the same.

4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for rupees with interest from the day of , at the rate of per cent per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

(Title)

A B., the above-named plaintiff, states as follows —

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles or merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*], at the said auction at the price of rupees

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*such price*] therefor, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[Demand of judgment]

[NOTE to § 4 — Unless the seller agreed to deliver, the purchaser must fetch the goods, see Act IX of 1872, section 93.]

THE FOURTH SCHEDULE—*continued*.

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title).

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound No. , in the city of or, a farm known as , in or, a piece of land lying, &c.]
2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, or farm or land].
3. That he has not paid the same

[Demand of judgment.]

[Note.—Where there has been no actual conveyance, say, in § 1, “sold to the defendant the house, &c, and placed him in possession of the same”]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(Title).

A. B., the above-named plaintiff, states as follows.—

- 1 That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No. , in the town of , or one hundred bighas of land in , bounded by the East Indian rail-road, and by other lands of the plaintiff] for rupees.
2. That on the day of 18 , at the plaintiff tendered [or, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same
- 3 That the defendant has not paid the said sum.

[Demand of judgment]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant [hired plaintiff as a clerk, at the salary of rupees per year].

THE FOURTH SCHEDULE—*continued.*

2. That from the [said day] until the day of
18 , the plaintiff served the defendant as his [clerk]
3. That the defendant has not paid the said salary.

[Demand of judgment]

No. 17.

FOR SERVICES AT REASONABLE PRICE

(Title).

A. B., the above-named plaintiff, states as follows.—

1. That between the day of 18, and the
day of 18, at , plaintiff [executed sun-
dry drawings, designs and diagrams] for the defendant, at his request ;
but no express agreement was made as to the sum to be paid for such
services.
2. That the said services were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment].

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE

(Title).

A. B., the above-named plaintiff, states as follows—

1. That on the day of 18, at , the
plaintiff [furnished the paper for and printed or caused to be
of a book called] for the defendant at his request [and deli-
vered the same to him]
2. That the defendant promised to pay rupees therefor.
3. That he has not paid the same

[Demand of judgment]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title).

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18, at , plain-
tiff built a house [known as No. , in], and furnished
the materials therefor, for the defendant, at his request, but no ex-
press agreement was made as to the price to be paid for such work
and materials.

THE FOURTH SCHEDULE—*Continued.*

2. That the said work and materials were reasonably worth
rupees

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 20.

FOR RENT RESERVED IN A LEASE.

(*Title*)

4. *B.*, the above-named plaintiff, states as follows :—

1 That on the day of 18 , at
the defendant entered into a contract with the plaintiff, under their
hands, a copy of which is hereto annexed

[*Or state the substance of the contract.*]

2 That the defendant has not paid the rent of the [month] ending on
the day of 18 , amounting to rupees

[*Demand of judgment*]

Another form.

1. That the plaintiff let to the defendant a house, No. 27, Chow-
ranghee for seven years to hold from the day of
18 , at rupees a year, payable
quarterly

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

No. 21.

For Use and Occupation at a Fixed Rent.

(*Title.*)

4. *B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at
the defendant hired from the plaintiff [the house No. ,
street], at the rent of rupees
payable on the first day of

2. That the defendant occupied the said premises from the
day of

18 to the day of 18 .
3 That the defendant has not paid rupees being the
part of said rent due on the first day of 18

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No 22

For Use and Occupation at a reasonable Rent.

(Title)

A. B., the above-named plaintiff, executor of the will of *X Y.*, deceased states as follows :—

1. That the defendant occupied the [house No. , street], by permission of the said *X. Y.*, from the day of 18 , and until the day of 18 , no agreement was made as to payment for the use of the said premises.

2 That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff, as such executor as aforesaid, prays judgment for rupees.

 No 23.

For Board and Lodging

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18 until the day of 18 , the defendant occupied certain rooms in the house [No. street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.

2 That, in consideration thereof, the defendant promised to pay [or that no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth], the sum of rupees

3. That the defendant has not paid the same

[Demand of judgment.]

 No 24.

FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour, or sundry goods], from to , at the request of the defendant.

THE FOURTH SCHEDULE—*continued.*

2 That the defendant promised to pay the plaintiff the sum of [one rupee per barrel) as freight thereon (*or*, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees).

3. That the defendant has not paid the same.

[*Demand of judgment*]

No. 25.

FOR PASSAGE-MONEY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plain-
tiff conveyed the defendant [in his ship, called the
], from to at his request.

2. That the defendant promised to pay the plaintiff
rupees therefor [*or* that no agreement was made as to the price of the
said passage, but the said passage was reasonably worth
rupees].

3. That the defendant has not paid the same.

[*Demand of judgment*].

No 26.

ON AN AWARD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at ,
the plaintiff and defendant, having a controversy between them con-
cerning [a demand of the plaintiff for the price of ten barrels of oil,
which the defendant refused to pay], agreed to submit the same to the
award of E. F. and G. H., as arbitrators [*or*, entered into an agree-
ment, a copy of which is hereto annexed].

2. That on the day of 18 , at ,
the said arbitrators awarded that the defendant should [pay the plain-
tiff rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[*Note.*—This will apply where the agreement to refer is not filed in Court].

THE FOURTH SCHEDULE—*continued.*

No. 27.

ON A FOREIGN JUDGMENT.

(Title)

A. B, the above-named plaintiff, states as follows .—

1. That on the _____ day of _____ 18____, at _____, in the State [or Kingdom] of _____, the _____ Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff _____ rupees, with interest from the said date.

2. That the defendant has not paid the same

[Demand of judgment]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title)

A B, the above-named plaintiff, states as follows —

1. That on the _____ day of _____, 18____, at _____, the defendant by his bond became bound to the plaintiff, in the sum of _____ rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff _____ rupees half-yearly on the _____ day of _____ and the _____ day of _____ in every year during the life of the plaintiff, the said bond should be void.

- 2 That afterwards, on the day of 18 , the
sum of rupees for of the said half-yearly pay-
ments of the said annuity became due to the plaintiff and is still
unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER

(Title.)

A. B. the above-named plaintiff, states as follows :—

1. That on the day of 18
at the defendant, by his promissory note, now over,
due, promised to pay to the plaintiff rupees [days-
after date
2. That he has not paid the same [except rupees, paid
on the day of 18]

2. That he has not paid the same [except rupees, paid
on the day of 18].

[Demand of judgment.]

THE FOURTH SCHEDULE—continued.

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute—]

1. That on the day of 18 , at the defendant by his promissory note promised to pay to the plaintiff rupees months after notice
2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.
3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the day of 18 , at the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. & Co's, Madras] rupees months after date.
2. That the said note was duly presented for payment [at Messrs. A. & Co's,] aforesaid, but has not been paid.

Written Statement of the Defendant.

IN THE COURT, &c.

C. D, the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances :—The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

THE FOURTH SCHEDULE—*continued.*

No. 30.

FIRST INDORSEE AGAINST MAKER.

• (Title).

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at
the defendant, by his promissory note, now overdue, promised to pay
to the order of E. F., [or to E. F. or order] rupees []
days after date]

2 That the said E. F. indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. [As in the last preceding form.]

2. That the same was, by the indorsement of the said E. F. and of
G. H. and I J. [or and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment]

No. 32

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. That E. F., on the day of 18 ,
at , by his promissory note, now overdue, promised to pay
to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 the same was
duly presented for payment, but was not paid.

[Or state facts excusing want of presentment]

4. That the defendant had notice thereof.

5. That he has not paid the same.

[Demand of judgment.]

↑
THE FOURTH SCHEDULE—*continued*.

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT
BEING SPECIAL

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one E. F. a promissory note, now overdue, made [*or purporting to have been made*] by one G. H., on the day of 18 , at , to the order of the defendant, for the sum of rupees [payable days after date].

2. That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff [*or, that the said E. F., indorsed the same to the plaintiff*]

3, 4 and 5. [*Same as 3, 4 and 5 of the last preceding form*]
[*Demand of judgment.*]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or purporting to have been made*] by one E. F., on the day of 18 , at , to the order of one G. H., for the sum of rupees [payable days after date], and indorsed by the said G. H. to the defendant.

2, 3 and 4. [*Same as in 3, 4 and 5 in Form No. 33.*]

[*Demand of judgment.*]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [*or purporting to have been made*] by one E. F., on the day of 18 , at , to the order of one G. H., for the sum of rupees [payable days after date], and indorsed by the said G. H., to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [*As in No. 33.*]

[*Demand of judgment.*]

No. 36.

AT

A. B. of
against
C D of
E. F of
and
G. H. of

[Demand of judgment.]

(Title).

1. That on the day of 18 , at
 , by his bill of exchange, now overdue, the plaintiff required the
 defendant to pay to him rupees [days
 after date, or sight thereof].
2. That the defendant accepted the said bill. [*If the bill is
 payable at a certain time after sight, the date of acceptance should be
 stated; otherwise it is not necessary.*]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and
 about the presenting and noting of the bill, and incidental to the
 dishonour thereof.

THE FOURTH SCHEDULE—*continued.*[*Demand of judgment.*]

Where the bill is payable to a third party, for paragraphs 1, 2, 3, or 4—

1. That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.
2. That the plaintiff delivered the said bill to the said *E. F.* on
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.
2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.
2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 40.

SUSSEQUENT INDORSEMENT AGAINST ACCEPTOR.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form to the end of article 1.*]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight.]
2. That on the day of 18 the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof
4. That he has not paid the same.

[Demand of judgment.]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [or after date, or at sight] thereof [and accepted by the said *G. H.* on the day of 18 .]
2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same

[Demand of judgment.]

THE FOURTH SCHEDULE—continued.

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT
BEING SPECIAL.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one E. F. a bill of exchange, now overdue, made [or purporting to have been made] by one G. H., on the day of 18 , at , requiring one I. J. to pay to the order of the defendant rupees days after sight thereof [or otherwise], and accepted by the said I. J. on the day of 18 . [This clause may be omitted if not according to the fact.]

2 That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said I. J. for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he had not paid the same.

[Demand of judgment.]

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the day of 18 , at , requiring one G. H. to pay to the order of I. J. rupees days after sight thereof [or otherwise], [accepted by the said G. H.] and indorsed by the said I. J. to the defendant.

2. That on the day of 18 the same was presented to the said G. H. for payment, and was dishonoured.

3 That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 45.

SUBSEQUENT INDORSEE AGAINST IMMEDIATE INDORSER.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [*or* purporting to have been made] by one E. F., on the _____ day of _____ 18____, at _____, requiring one G. H. to pay to the order of one I. J. _____ rupees _____ days after sight thereof [*or otherwise*], [accepted by the said G. H.] and indorsed by the said I. J. to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. That on the _____ day of _____ 18____ the same was presented to the said G. H. for payment, and was dishonoured.
- 3 That the defendant had due notice thereof.
- 4 That he has not paid the same.

[Demand of judgment],

No 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF

AT

Civil Suit No.

A. B. of
 against
 C. D. of
 E. F. of
 and
 G. H. of

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant, C. D., by his bill of exchange, now overdue, directed to the defendant, E. F., required the said E. F. to pay to the order of the defendant, G. H., _____ rupees [_____ days after sight thereof.]
2. That on the _____ day of _____ 18____ the said E. F. accepted the same.
3. That the said G. H. indorsed the same to the plaintiff.
4. That on the _____ day of _____ 18____ the same was presented to the said E. F. for payment, and was dishonoured.
- 5 That the other defendants had due notice thereof.
6. That they have not paid the same.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued*

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.

2. That on the day of 18 the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [or days after sight] thereof.

2. That on the day of 18 the defendant accepted the said bill.

3. That he has not paid the same.

[Demand of judgment.]

No. 49.

ON A MARINE (OPEN) POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of [or had an interest in] the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [or which the plaintiff then promised to pay]

THE FOURTH SCHEDULE—*continued.*

executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed (*or*, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees).

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was on the day of 18 totally lost by the perils of the sea (*or otherwise.*)

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO, LOST BY FIRE —VALUED POLICY.

(*Title.*).

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed [*or*, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods.]

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire [*or*, as the case may be].

4, 5 and 6. [*As in paragraphs 4, 5 and 6 of the last preceding form*]

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 51.

ON FREIGHT :—VALUED POLICY.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight^{to be earned} by the ship on her voyage from ^{to} at the time of her loss as hereinafter mentioned and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18, at ^{, the defendant,} in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed (*or state its tenor, as before*).

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18, totally lost by (the perils of the sea).

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid

5 and 6. (*As in Form No. 49.*)

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of (*or had an interest in*) (one hundred bales of cotton) shipped on board a vessel called the *Y Z*, from ^{to}, at the time of the loss hereafter mentioned.

2. That on the day of 18, at ^{, in} consideration of rupees (which the plaintiff then promised to pay), the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed (*or state its tenor, as before*).

3. That on the day of 18, while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

THE FOURTH SCHEDULE—*continued.*

4. That plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(*Title.*)

A. B., the above-named plaintiff, states as follows.—

1 and 2 (*As in the last preceding form.*)

3. That on the day of 18 , while on the high seas, the sea water broke into the said ship, and damaged the said (cotton) to the amount of rupees

4 and 5. (*As in paragraphs 5 and 6 of the last preceding form.*)

[*Demand of judgment.*]

No. 54.

ON A FIRE-INSURANCE POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff (was the owner of, or) had an interest in a (dwelling-house, known as No. , street, in the city of ,) at the time of its destruction (or, injury) by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees (to them paid), the defendants executed to the plaintiff a policy of insurance on the said (premises), a copy of which is hereto annexed (or state its tenor).

3. That on the day of 18 the said (dwelling-house) was totally destroyed (or greatly damaged) by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

THE FOURTH SCHEDULE—*continued.*

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one E. F. hired from the plaintiff, for the term of years, the (house No. , street, ,) at the annual rent of rupees, payable (monthly).

2. That (at the same time and place) the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement notice is required to be given to the surety, add :—*]

4. That on the day of 18 the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B.—PLAINT FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

(Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of (ten thousand) rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of (the house No. , street, in the city of , free from all incumbrances; and the

THE FOURTH SCHEDULE—*continued.*

plaintiff agreed to pay (ten thousand) rupees for the same on delivery thereof).

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant (*or*, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part).

3. That the defendant has not executed any conveyance of the said property to the plaintiff (*or*, that there is a mortgage upon the said property, made by to , for rupees, registered in the office of on the day of 18 , and still unsatisfied, *or any other defect of title*).

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

(*Or*, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees).

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property (and the same being free from all incumbrances, as was made to appear to the defendant), tendered to the defendant a sufficient instrument of conveyance of the same *or*, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument), on the payment by the defendant of the said sum.

3. That the defendant has not paid the same

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That by an agreement dated the day of, 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon terms and conditions following (that is to say) :—

(a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver (one hundred barrels of flour) to the plaintiff (on the day of 18), and that the plaintiff should pay therefor rupees on delivery.

2. that on the (said) day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

THE FOURTH SCHEDULE—*continued*.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(*Title*).

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always has notice

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff and refused to permit him to serve as aforesaid, or to pay him for his services

[*Demand of judgment*]

No. 61

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT
NEVER TOOK EFFECT

(*Title*).

A. B., the above-named plaintiff, states as follows —

1. [*As in last preceding Form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of judgment*]

THE FOURTH SCHEDULE—*continued.*

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (annual) compensation of rupees, and that the defendant should serve the plaintiff as (an artist) for the term of (one year).
2. That the plaintiff has always been ready and willing to perform his part of the said agreement (and on the day of 18 offered so to do).
3. That the defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he refused to serve the plaintiff as aforesaid.

[Demand of judgment.]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy hereto annexed.
- (Or state the tenor of the contract).*
- (2. That the plaintiff duly performed all the conditions of the said agreement on his part).
3. That the defendant (built the house referred to in the said agreement in a bad and unworkmanlike manner).

(Demand of judgment.)

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed.

* The form given in Act XIX of 1850 requires the seal of the father or guardian.

THE FOURTH SCHEDULE—*continued*.*(Or state the tenor of the contract).*

2. That after the making of the said agreement the plaintiff received the said (*apprentice*) into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the day of 18 the said (*apprentice*) wilfully absented himself from the service of the plaintiff, and continues so to do.

[Demand of judgment.]

 No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], E. F., under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment.]

[Demand of judgment.]

 No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the plaintiff employed one E. F. as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff that if the said E. F. should not faithfully perform his duties as a clerk to the plaintiff, or

THE FOURTH SCHEDULE—*continued.*

should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[Or, 2. That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed]

3 That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment.*]

No. 67.

BY TENANT AGAINST LANDLORD WITH SPECIAL DAMAGE.

(*Title*).

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff (the house No , street), for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representative should quietly enjoy possession thereof for the said term.

2 That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby (prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal).

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[Demand of judgment.]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant, being partners in trade under the firm of A. B. & C. D., dissolved the said partnership and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 (a judgment was recovered against the plaintiff and defendant by one E. F., in the High Court of Judicature at , upon a debt due from the said firm to the said E. F., and on the day of 18), the plaintiff paid rupees (in satisfaction of the same).

4. That the defendant has not paid the same to the plaintiff.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 70.

BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

(*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship , at , on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight ; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day).

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive (the said merchandise, *or*, the merchandise mentioned in the said agreement) from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered upon certain land of the plaintiff, known as , [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That the defendant entered a dwelling-house of the plaintiff, called _____, and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

No. 73.

FOR TRESPASS ON MOVEABLES.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street (or, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, or as the case may be, and carried away the same and disposed of them to his own use).

(Or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.)

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him ; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff (*otherwise, state the injury according to the facts.*)

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18th , plaintiff was in possession of certain goods described in the schedule hereto annexed (*or*, of one thousand barrels of flour).

2 That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

*[Demand of judgment.]**The Schedule.*

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

*(Title).**A. B.*, the above-named plaintiff, states as follows .—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees (*or*, rupees per barrel, per month, &c.), agreed to keep in his godown (one hundred barrels of flour) and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said (hundred barrels of flour).

3. That on the day of 18 the plaintiff requested the defendant to deliver the said goods, and tendered him rupees (*or* the full amount of storage due thereon), but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.* and the same are lost to the plaintiff.

[Demand of judgment].

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

*(Title).**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell

THE FOURTH SCHEDULE—*continued.*

him certain goods, represented to the plaintiff that (he, the defendant, was solvent, and worth rupees over all his liabilities).

2 That the plaintiff was, thereby induced to sell (and deliver) to the defendant (dry goods) of the value of rupees.

3. That the said representations were false (*or, state the particular falsehoods*) and were then known by the defendant to be so.

4 That the defendant has not paid for the said goods. (*Or, if the goods were not delivered, that the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.*]

[*Demand of judgment.*]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO
ANOTHER PERSON.

(*Title.*)

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth rupees over all his liabilities [*or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.*]

2. That the plaintiff was thereby induced to sell to the said E. F. [*rice*] of the value of rupees [*on months credit.*]

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or, to deceive and injure the plaintiff*]

4. That the said E. F. [*did not pay for the said goods at the expiration of the credit aforesaid, or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows.—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and

THE FOURTH SCHEDULE.—*continued.*

of a well therein and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2 That on the day of 18 the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[*Demand of judgment.*]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in

2. That ever since the day of 18 the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

No. 80.

FOR OBSTRUCTING A WAY.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of).

2. That he was entitled to a right of way from the said (house) over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants (with vehicles, *or*, on foot, *or*, in any manner) along the said way (and has ever since wrongfully obstructed the same).

3. That on the day of , 18 defendant wrongfully obstructed the said way, so that the plaintiff could not pass (with vehicles, *or*, on foot, *or*, in any manner) along the said way (and has ever since wrongfully obstructed the same).

4. (*State special damage, if any*).

[Demand of judgment.]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones (*or*, into the said trench) and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

No. 81.

FOR DIVERTING A WATER-COURSE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a (stream) known as the , in the village of , district of

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

THE FOURTH SCHEDULE—*continued.*

3. That on the day of 18 the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day;

[*Demand of judgment.*]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*Demand of judgment.*]

No. 83.

FOR WASTE BY A LESSEE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 the defendant hired from him [the house No. , street] for the term of

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation the defendant greatly injured the premises [defaced the walls, tore up the floors and broke down the doors; or otherwise specify the injuries as far as possible]

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

That on the day of 18 , at , the defendant assaulted and beat him.

The plaintiff prays judgment for rupees compensation.

No. 85.

(Title).

1. That on the _____ day of _____ 18____, at _____, the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be.*]

[Demand of judgment.]

No. 86.

(Title).

1. That on the day of 18 , at
for , the defendant assaulted the plaintiff and imprisoned him
thus :— days [or hours]; [*state special damage, if any,*

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [or otherwise as the case may be.]

[Demand of judgment]

No. 87.

(Title).

1. That on the day of 18 the defend-
ants were common carriers of passengers by railway between .
 and /

THE FOURTH SCHEDULE—*continued.*

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at [or, near the station of ; or, between the stations of and], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a [salesman].

[Demand of judgment.]

[Or thus.—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at The defendant is a merchant of

2. On the [23rd May 1875], the plaintiff was walking eastward along Chowringhee, in the city of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

THE FOURTH SCHEDULE—*continued.*

(Title).

Written Statement of Defendant.

The defendant denies that the carriage mentioned in the plaintiff's complaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. E. F. and G. H.] of _____ Street, Calcutta livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. E. F. and G. H.]

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaintiff.

No. 89.

FOR LIBEL; THE WORD BEING LIBELLOUS IN THEMSELVES.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. That on the _____ day of _____ 18____, at _____, the defendant published in a newspaper, called the _____ [or; in a letter addressed to E. F.], the following words concerning the plaintiff:—

[Set forth the words used.]

2. That the said publication was false and malicious.

[Demand of judgment.]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—“Which said words, being translated into the _____ language, have the meaning and effect following and were so understood by the persons to whom they were so published, that is to say [here set out a literal translation of the libel in the language of the Court].”

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the _____ day of _____ 18____, a merchant doing business in the city of _____

THE FOURTH SCHEDULE,—*continued.*

2. That on the day of 18 , at
the defendant published in a newspaper, called the
[or, in a letter addressed to *E. F.*, or otherwise
how published], the following words concerning the plaintiff:—

["*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address."]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[*Demand of judgment.*]

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at
 , the defendant falsely and maliciously spoke, in the hearing of *E. F.* or, sundry persons], the following words concerning the plaintiff: ["He is a thief"].

2. That in consequence of the said words the plaintiff lost his situation as in the employ of .

[*Demand of judgment.*]

No. 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at
the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff. ["He is a young man of remarkably easy conscience."]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 93.

FOR MALICIOUS PROSECUTION.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a Magistrate of the said city, *or, as the case may be*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, *or* hours, and gave bail in the sum of rupees to obtain his release].

2. That in so doing the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 the said Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; *or*, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F., *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE
PROPERTY.*(Title).*

A. B., the above-named plaintiff, states as follows :—

1. That X. Y. was the absolute owner [of the estate, *or*, the share of the estate, called , situate in the district of , the Government revenue of which is rupees , and the estimated value rupees, *or*, of the house No , street, in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , Z. illegally dispossessed the said X. Y. of the said estate [*or* share *or* house].

3. That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B. his heir and him surviving.

THE FOURTH SCHEDULE—*continued*.

4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.

The plaintiff pays judgment—

- (1) for the possession of the said premises ;
- (2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows :—

1. On the day of the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 a month's rent became due, and on the day of 18 another month's rent became due ; on the day of 18 both had been in arrear for twenty-one days and both are still due.

5. On the same day of 18 the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims—

- (1) possession of the said house and premises ;
- (2) rupees for arrears of rent ;
- (3) rupees compensation for the defendant's breach of his covenant to repair ;
- (4) rupees for the occupation of the house and premises from the day of 18 to the day of recovering possession.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment—

- (1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;
- (2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE
WITH NOTICE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [C. D.], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said C. D. to be so. [Or, that at the time of making the said representations, the said C. D. was insolvent, and knew himself to be so.]

4. That the said C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation.]

The plaintiff prays judgment—

- (1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;
- (2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 the defendant represented to the plaintiff that a certain piece of ground belong-

THE FOURTH SCHEDULE—*continued*.

ing to the defendant, situated at _____, contained [ten bighas.]

2. That the plaintiff was thereby induced to purchase the same at the price of _____ rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the _____ day of _____ 18 _____ the plaintiff paid the defendant _____ rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

The plaintiff prays judgment—

(1) for _____ rupees, with interest from the _____ day of _____ 18 _____ ;

(2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [*describe the property*.]

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. _____ street, Calcutta].

THE FOURTH SCHEDULE—*continued.*

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street .]

3. That on the day of 18 the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff.]

4. That the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same]

The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title).

A. B., the above-named plaintiff, states as follows :—

[As in Form No. 81.]

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all time hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [or, state any facts showing that the property is of a kind that cannot be replaced by money].

2. That on the day of 18 he deposited the same for safe keeping with the defendant.

3. That on the day of 18 he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

THE FOURTH SCHEDULE—*continued.*

The plaintiff prays judgment—

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting] ;
- (2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That before the date of the claims hereinafter mentioned one G. H. deposited with the plaintiff (*describe the property*) for (safe keeping).

2. That the defendant, C. D., claims the same (under an alleged assignment thereof to him from the said G. H.)

3. That the defendant E. F., also claims the same (under an order of the said G. H. transferring the same to him).

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;

(2) that they be required to interplead together concerning their claims to the said property ;

[(3) that some person be authorized to receive the said property pending such litigation ;]

(4) that upon delivering the same to such (person) the plaintiff be discharged from all liability to either, of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. E. F., late of _____, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of _____ [here insert nature of debt and security, if any].

THE FOURTH SCHEDULE—continued.

2. The said *E. F.*, made his will, dated the _____ day of _____, and thereof appointed *C. D.* executor [or, devised his estate in trust, &c., or, died intestate, as the case may be.]

3. The said will was proved by the said *C. D.* [or, letters of administration were granted, &c.]

4. The defendant has possessed himself of the moveable [and immoveable, or, the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the _____ day of _____

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title).

[Alter Form No. 105 thus :—]

[Omit paragraph 1 and commence paragraph 2] *E. F.*, late of _____, duly made his last will, dated the _____ day of _____, and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff [here state the specific legacy.]

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title).

[Alter Form No. 105 thus :—]

[Omit paragraph 1 and substitute for paragraph 2] *E. F.*, late of _____, duly made his last will, dated the _____ day of _____, and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff a legacy of _____ rupees.

In paragraph 4 substitute "legacy" for "debt."

THE FOURTH SCHEDULE—continued.

*Another Form.*Between *E. F.* ... Plaintiff,

and

G. H. ... Defendant*E. F.*, the above-named plaintiff, states as follows.—

1. *A. B.* of *K.* in the duly made his last will, dated the [first day of March 1873], whereby he appointed the defendant and *M. N.* [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the persons who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July 1878], and his will was proved by the defendant on the [fourth day of October 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

(1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose have all proper direction given and accounts taken;

(2) such further or other relief as the nature of the case may require.

Between *E. F.* ... Plaintiff,

and

G. H. ... Defendant.*Written Statement of Defendant.*

1. *A. B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees , and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

THE FOURTH SCHEDULE—*continued.*

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF _____, AT
Civil Suit No.

* A. B. of
against

... Plaintiff,

C. D. of the beneficiary (or one
of the beneficiaries) ... Defendant.

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement therein date on or about the _____ day of _____ made upon the marriage of E. F. and G. H., the father and mother of the defendant (or, an instrument of assignment of the estate and effects of E. F. for the benefit of C. D., the defendant, and other the creditors of E. F.)

2. The said A. B. has taken upon himself the burden of the said trust, and is in possession of (or, of the proceeds of) the moveable and immoveable property conveyed (or, assigned) by the before-mentioned deed.

3. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property (and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust); and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C. D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons interested as the Court may direct, or that the said C. D. may show good cause to the contrary.

[N.B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

THE FOURTH SCHEDULE—*continued*.

No. 109.

FORECLOSURE OR SALE.

(Title).

A. B, the above-named plaintiff, states as follows :—

1. By a mortgage-deed dated the _____ day of _____ 18____ a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs [or executors, administrators,] and assigns, for securing the principal sum of Rs. _____ together with interest thereon at the rate of Rs. _____ per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. _____ for principal and interest on the said mortgage.

3. The plaintiff prays (a) that the Court will order the defendant to pay him the said sum of Rs. _____ with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises ; or (b) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs, and (c) that, if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization ; and (d) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(Title).

[Alter Form No. 109 thus :—]

*Transpose parties and also the facts in paragraph 1.**For paragraph 2 substitute—*

* 2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. _____, which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

THE FOURTH SCHEDULE—*continued.*

For paragraph 3 substitute—

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any), as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1).

(Title).

A. B., the above-named plaintiff, states as follows :—

1. By an agreement dated the day of and signed by the above-named defendant, C. D., he the said C. D. contracted to buy of [or sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said C. D. specifically to perform the said agreement and to do all acts necessary to put the said A. B. in full possession of the said property (or to accept a conveyance and possession of the said property) and to pay the costs of the suit.

[N.B.—*In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

No. 112.

SPECIFIC PERFORMANCE. (No. 2).

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the _____ day of _____ 18 _____ the plaintiff tendered _____ rupees to the defendant, and demanded a conveyance of the said property.

4. That on the _____ day of _____ 18 _____ the plaintiff again demanded such conveyance. (*Or*, That the defendant refused to convey the same to the plaintiff.)

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment—

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property (*following the terms of the agreement*).

(2) for _____ rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(*Title*).

A. B., the above-named plaintiff, states as follows .—

1. He and the said C. D., the defendant, have been for the space of _____ years (*or* months) last past carrying on business, together at _____ within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively, (*or*, under a certain deed sealed and executed by them respectively, *or*, under a verbal agreement between them, the said plaintiff and defendant).

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles (*or* deed, *or* agreement).

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance

THE FOURTH SCHEDULE—*continued*.

remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles (or deed, or agreement), or that, if the said assets shall prove insufficient, the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by _____ of _____, pleader
for the plaintiff, (or by _____).

(N.B.—*In suits for winding-up of any partnership, omit the prayer for dissolution but instead thereof insert a paragraph stating the fact of the partnership having been dissolved*).

No 114.

FORMS OF CONCISE STATEMENTS.

(Code of Civil Procedure, section '58).

Money lent	The plaintiff's claim is _____ rs. for money lent (and interest).
Several demands	The plaintiff's claim is _____ rs. whereof _____ rs. is for the price of goods sold, and _____ rs. for money lent, and _____ rs. for interest.
Rent	The plaintiff's claim is _____ rs. for arrears of rent.
Salary, &c.	The plaintiff's claim is _____ rs. for arrears of salary as a clerk (<i>or as the case may be</i>).
Interest	The plaintiff's claim is _____ rs. for interest upon money lent.
General average	The plaintiff's claim is _____ rs. for general average contribution.
Freight, &c.	The plaintiff's claim is _____ rs. for freight and demurrage.
Banker's balance	The plaintiff's claim is _____ rs. for money deposited with the defendant as a banker.
Fees, &c., as pleader	The plaintiff's claim is _____ rs. for fees for work done (and _____ rs. for money expended as a pleader).
Commission	The plaintiff's claim is _____ rs. for commission earned as (<i>state character—as auctioneer, cotton-broker, &c.</i>)
Medical attendance	The plaintiff's claim is _____ rs. for medical attendance.

THE FOURTH SCHEDULE—*continued.*

Return of premium	The plaintiff's claim is	rs. for a return of premium paid upon policies of insurance.
Warehouse-rent	The plaintiff's claim is	rs. for the warehousing of goods.
Carriages of goods	The plaintiff's claim is	rs. for the carriage of goods by railway.
Use and occupation of house	The plaintiff's claim is	rs. for the use and occupation of a house.
Hire of goods	The plaintiff's claim is	rs. for the hire of (furniture).
Work done	The plaintiff's claim is	rs. for work done as a (surveyor).
Board and lodging	The plaintiff's claim is	rs. for board and lodging.
Schooling	The plaintiff's claim is	rs. for the (board, lodging and) tuition of X, Y.
Money received	The plaintiff's claim is	rs. for money received by the defendant as pleader (<i>or</i> factor <i>or</i> collector, <i>or</i> &c.) of the plaintiff.
Fees of office	The plaintiff's claim is	rs. for fees received by the defendant under colour of the office of .
Money overpaid	The plaintiff's claim is	rs. for a return of money overcharged for the carriage of goods by railway.
	The plaintiff's claim is	rs. for a return of fees overcharged by the defendant as .
Return of money by stake-holder	The plaintiff's claim is	rs. for a return of money deposited with the defendant as stakeholder.
Money won from stake-holder	The plaintiff's claim is	rs. for money entrusted to the defendant as stakeholder, and become payable to plaintiff.
Money entrusted to agent	The plaintiff's claim is	rs. for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud	The plaintiff's claim is	rs. for a return of money obtained from the plaintiff by fraud.
Money paid by mistake	The plaintiff's claim is	rs. for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed	The plaintiff's claim is	rs. for a return of money paid to the defendant for (work to be done, <i>or</i> , work left undone ; <i>or</i> , a bill to be taken up, <i>or</i> , a bill not taken up ; <i>or</i> , &c.)

THE FOURTH SCHEDULE—*continued*.

	The plaintiff's claim is	rs. for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant	The plaintiff's claim is	rs. for money paid for the defendant as his surety.
Rent paid	The plaintiff's claim is	rs. for money paid for rent due by the defendant.
Money paid on accommodation-bill	The plaintiff's claim is	rs. upon a bill of exchange accepted (<i>or</i> indorsed) for the defendant's accommodation.
Contribution by Surety	The plaintiff's claim is	rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor	The plaintiff's claim is	rs. for a contribution in respect of a joint-debt of the plaintiff and the defendant paid by the plaintiff.
Money paid for calls	The plaintiff's claim is	rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award	The plaintiff's claim is	rs. for money payable under an award.
Life-policy	The plaintiff's claim is	rs. upon a policy of insurance upon the life of X. Y., deceased.
Money-bond	The plaintiff's claim is	rs. upon a bond to secure payment of
Foreign judgment	The plaintiff's claim is	rs. upon a judgment of the Court in [the Empire of Russia].
Bills of exchange, &c.	The plaintiff's claim is	rs. upon a cheque drawn by the defendant.
	The plaintiff's claim is	rs. upon a bill of exchange accepted (<i>or</i> drawn, <i>or</i> indorsed) by the defendant.
	The plaintiff's claim is	rs. upon a promissory note made (<i>or</i> indorsed) by the defendant.
	The plaintiff's claim is	rs. against the defendant A. B., as acceptor, and against the defendant C. D., as drawer (<i>or</i> indorsor), of a bill of exchange.
Surety	The plaintiff's claim is	rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is	rs. against the defendant A. B., as principal, and against the defendant C. D., as surety, for the price of goods sold (<i>or</i> for arrears of rent, <i>or</i> for money lent, <i>or</i> for money re-

THE FOURTH SCHEDULE—*continued.*

ceived by the defendant *A. B.* as traveller for the plaintiff, &c, &c)

Calls The plaintiff's claim is rs. for calls upon shares.

Indorsement of Costs, &c.

(*Add to the above forms*) and rs. for costs :
and if the amount claimed be paid to the plaintiff or his pleader within days (*or in the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*) from the service hereof, further proceedings will be stayed.

Damages and other Claims.

Agent, &c. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller (and rs. for arrears of wages).

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor (*or, &c.*) of the plaintiff [and rs. for money received as factor, *or, &c*)

Apprentices The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant (*or plaintiff*).

Arbitration The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*

Assault, &c. The plaintiff's claim is for damages for assault (and false imprisonment, and for malicious prosecution).

By husband and wife The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C. D.*

Against husband and wife The plaintiff's claim is for damages for assault by the defendant *C. D.*

Pleader The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.

Bailment The plaintiff's claim is for damages for negligence in the custody of goods (and for wrongfully detaining the same).

Pledge The plaintiff's claim is for damages for negligence in the keeping of goods pawned (and for wrongfully detaining the same).

THE FOURTH SCHEDULE—*continued.*

Hire	The plaintiff's claim is for damages for negligence in the custody of furniture (for, a carriage) lent on hire, (and for wrongfully, &c.)
Banker	The plaintiff's claim is for damages for wrongfully neglecting [or, refusing] to pay the plaintiff's cheque.
Bill	The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
Bond	The plaintiff's claim is upon a bond conditioned not to carry on the trade of a
Carrier	The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. The plaintiff's claim is for damages for refusing to carry the plaintiff by railway. The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway. The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
Charter-party	The plaintiff's claim is for damages for breach of charter-party of ship [<i>Mary</i>].
Claim for return of goods; damages	The plaintiff's claim is for return of household furniture (or &c.) or their value, and for damages for detaining the same.
Damages for depriving of goods	The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.
Defamation	The plaintiff's claim is for damages for libel. The plaintiff's claim is for damages for slander.
Wrongful distress	The plaintiff's claim is for damages for improperly distraining. (<i>This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular.</i>)
Ejectment	The plaintiff's claim is to recover possession of a house, No. in Street, or of a farm called Blackacre, situate in the of in the of
To establish title and recover rents	The plaintiff's claim is to establish his title to (<i>here describe property</i>) and to recover the rents thereof. (<i>The two previous Forms may be combined.</i>)
Fishery	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse (or a business, or shares, or, &c.)

THE FOURTH SCHEDULE—*continued*.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

Guarantee

The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.*

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance

The plaintiff's claim is for a loss under a policy upon the ship (*Royal Charter*), and freight of cargo (or for return of premiums).

(This Form shall be sufficient whether the loss claimed be total or partial.)

Fire-insurance

The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal

The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

Act XIII of 1855

The plaintiff's claim is as executor of *A. B.*, deceased, for damages for the death of the said *A. B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage

The plaintiff's claim is for damages for breach of promise of marriage.

THE FOURTH SCHEDULE—*continued.*

- Sale of goods** The plaintiff's claim is for damages for breach of contract to accept and pay for goods.
 The plaintiff's claim is for damages for non-delivery (*or* short delivery, *or* defective quality, *or* other breach *or* contract *or* sale) of cotton (*or*, &c.).
 The plaintiff's claim is for damages for breach of warranty of a horse.
- Sale of land** The plaintiff's claim is for damages for breach of a contract to sell (*or* purchase) land.
 The plaintiff's claim is for damages for breach of contract to let (*or* take) a house.
 The plaintiff's claim is for damages for breach of contract to sell (*or* purchase) the lease, with good-will, fixtures and stock-in-trade of a public-house.
 The plaintiff's claim is for damages for breach of covenant for title (*or* for quiet enjoyment, *or*, &c) in a conveyance of land.
- Trespass on land** The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* felling his timber, *or* pulling down his fences *or* removing his gate, *or* using his road or path *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river.)
- Support** The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (*or* house, *or* mine).
- Way** The plaintiff's claim is for damages for wrongfully obstructing a way (public highway, *or* private way).
- Water-course, &c.** The plaintiff's claim is for damages for wrongfully diverting (*or* obstructing *or* polluting, *or* diverting water from) a water-course.
 The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land *or* into the plaintiff's mine.
 The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
- Pasture** The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.
 [*This Form shall be sufficient whatever the nature of the right to pasture be.*]

THE FOURTH SCHEDULE—*continued.*

Light	The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.
Patent	The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
Copyright.	The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.
Trademark	The plaintiff's claim is for damages for wrongfully using (or imitating) the plaintiff's trademark.
Work	The plaintiff's claim is for damages for breach of a contract to build a ship or to repair a house, &c.). The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
Nuisance	The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (or &c.) The plaintiff's claim is for damages from nuisance by noise from the defendant's works (or stables, or, &c.).
Injunction	[Add to indorsement].—and for an injunction. [Add to indorsement where claim is to land or to establish title, or both].—
Mesne profits	and for mesne profits.
Arrears of rent	and for an account of rents or arrears of rent.
Breach of covenant	and for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X. Y., of , deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the administrator of the said X. Y. [and the defendants, E. F. and G. H., as his co-heirs at law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the Will dated the day of 18 , of X. Y., deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant C. D. is sued as, the executor of the said X. Y. [and the defendants E. F. and G. H., as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of

THE FOURTH SCHEDULE—*continued.*

partnership dated the day of], and to have the affairs of the partnership wound up.

4. By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the day of , made between [parties] [or, by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. By Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [parties] and to redeem the property comprised therein.

6. Raising Portions.

The plaintiff's claim is that the sum of rs. which by a deed of settlement, dated , was provided for the portions of the younger children of may be raised.

7. Execution of Trusts.

The plaintiff's claim is to have the trusts of an indenture dated and made between [parties] carried into execution.

8. Cancellation or Rectification.

The plaintiff's claim is to have a deed dated and made between [parties] set aside or rectified.

9. Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated the day of for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at .

No. 115.

PROBATE.

1. By an executor of legatee propounding a Will in solemn form.

The plaintiff claims to be executor of the last Will dated the day of of C. D., late of deceased, who died on the day of , and to have the said Will established. This summons is issued against you as one of the next-of-kin of the said deceased [or as the case may be.]

THE FOURTH SCHEDULE—*continued.*

2. *By an executor or legatee of a former Will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last Will dated the _____ day of _____ of C. D., late of _____, deceased, who died on the _____ day of _____ and to have the probate of a pretended will of the said deceased, dated the _____ day of _____, revoked. This summons is issued against you as the executor of the said pretended Will [or, as the case may be].

3. *By an executor or legatee of a Will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last Will of C. D., late of _____, deceased, who died on the _____ day of _____, dated the _____ day of _____.

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said Will granted to him.

4. *By a person claiming grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D., of _____, deceased, who died on the _____ day of _____, intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [or as the case may be].

THE FOURTH SCHEDULE—*continued.*

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 65 of the Code of Civil Procedure.

(Title.)

To

dwelling at

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

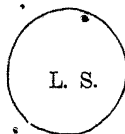
2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS
has instituted a suit against you for
, you are hereby
summoned to appear in this Court
in person or by a duly authorized
pleader of the Court, duly instructed,
and able to answer all material
questions relating to the suit, or
who shall be accompanied by some
other person able to answer all
such questions, on
the . day of

, 18
, at o'clock in the forenoon,
to answer the above-named plaintiff;
and, as the day fixed for your appearance
is appointed for the final disposal of the
suit, you must be prepared to produce all
your witnesses on that day; and you are
hereby required to take notice that, in default of your
appearance on the day before-mentioned,
the suit will be heard and determined in your
absence; and you will bring with you, or
send by your pleader

, which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day
of . 18 .



Judge.

NOTE—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of

THE FOURTH SCHEDULE—*continued.*

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce on applying to the Court at any time before the trial, on your depositing their necessary subsistence money.

2 If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property or both if necessary.

WHEREAS _____ has instituted a suit against you for _____, you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the _____ day of _____ 18____, at _____ o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you or send by your pleader _____, which the plaintiff desires to inspect and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this _____ day of _____ 18____

L. S.

Judge

Note.—If written statements are required, say—You are (or such a party is, as the case may be) required to put in a written statement by the _____ day of _____

THE FOURTH SCHEDULE—*continued.*

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. of suit.

IN THE COURT OF

AT

Plaintiff,
Defendant.

To

(Name, description and address.)

WHEREAS [*here enter the name, description and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the register*]: you are hereby summoned to appear in this Court in person on the day fo
at in the forenoon. [*If not specially required to appear in person state—"in person or by a pleader of the Court duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"*] to answer the above-named plaintiff [*if the summons be for the final disposal of the suit, this further direction shall be added here, and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day*"]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18



Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

A 30

THE FOURTH SCHEDULE—*continued.*

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit No. of 18

A. B. of
against
C. D. of

The day of 18

WHEREAS it is stated in the plaint that , the defendant* in the above suit , is at present residing in , but that the right to sue accrued within the jurisdiction of this Court : it is ordered that a summons returnable on the day of 18 be forwarded for service on the said defendant to the Court of with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil suit No. of 18

The day of 18
A. B. of
against
C. D. of

Read the proceeding from the forwarding for service on in civil No. of that Court. Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath or] affirmation of and it is ordered that the be returned to the with a copy of this proceeding.

L. S.

Judge.

Note.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner,

THE FOURTH SCHEDULE—*continued.*

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(Title).

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said *E. F.* in the plaint, named [or, as heir-at-law or as next-of-kin, or one of the next-of-kin, of *E. F.*, deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [or deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or that it appears upon the said plaint that I am jointly liable with one *E. F.* who is not a party to the suit and not severally liable as by the plaint appears, or, that it appears by the said plaint that *G. H.* should have been a joint-plaintiff with the said *A. B.* in the said suit, or as the case may be].

Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one *I. J.* [or, that I have conveyed or assigned to *H. L.* by way of further charge for securing the sum of Rs. the right to redeem in the property sought by the suit to be foreclosed].

Or that since the dissolution of the partnership, the plaintiff has executed an instrument whereby the plaintiff covenants to discharge all debts and liabilities of the partnership and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [or, as the case may be.]

Signed

C. D.,

Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18

A. B.

against

C. D., E. F. and G. H.

Interrogatories on behalf of the above-named *A. B.* [or *C. D.*] for the examination of the above-named *E. F.* and *G. H.* [or *A. B.*]

1. Did not, &c.
2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered .

The defendant *G. H.* is required to answer the interrogatories numbered.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B.
against
C. D.

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the [following documents referred to in your plaint [or written statement or affidavit], dated the _____ day of _____, 18____.

Describe documents required.

X. Y., Pleader for the plaintiff [or the defendant].

To Z,
Pleader for the defendant [or plaintiff].

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(Title).

To

WHEREAS your attendance is required to
on behalf of the _____ in the above cause, you are hereby
required [personally to appear before this Court] on the _____ day of
18 _____, at the hour of _____ A.M. [and] to bring with you or to
send to this Court _____

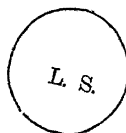
A sum of Rs. _____, being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

NOTICE—(1). If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

THE FOURTH SCHEDULE—*continued.*

(2). If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of
18 -



Judge.

No 126.

Another form.

No. of Suit

IN THE COURT OF AT

To

Plaintiff,
Defendant.

[*Name, description and address.*]

You are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff [or the defendant] in the above-mentioned suit, and to produce [*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*], and you are not to depart thence until you have been examined [or have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

Title.

Claim for

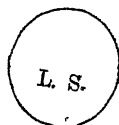
THIS cause coming on for final disposal before
in the presence of on the part of the
plaintiff, and on the part of the defendant, it is
ordered that the do pay to the
the sum of Rs. , with interest thereon at the rate of
per cent. per from
to the date of realization of the said sum, and do also pay to the
the costs of this suit as taxed by the officer
of the Court, with interest thereon at the rate aforesaid from the
date of taxation to the date of realization.

THE FOURTH SCHEDULE—continued.

Costs of suit.

PLAINTIFF.	Rs.	A	P.	DEFENDANT.	Rs.	A	P.
1. Stamp for plaint...				Stamp for power ...			
2. Do. for power ...				Do. petition ...			
3. Do. for exhibits ...				Pleader's fee ...			
4. Pleader's fees on Rs. ...				Subsistence for wit- nesses ...			
5. Translation-fee ...				Service of process ...			
6. Subsistence for witness for attend- ance ...				Translation-fee ...			
7. Commissioner's fee ...				Commissioner's fee ...			
8. Service of pro- cess ...							
9. &c. ...							
TOTAL ...				TOTAL ...			

GIVEN under my hand and the seal of the Court, this day
18 .



Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED
TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer]
to take an account of what is due to the plaintiff for principal and
interest on the mortgage [or lien] mentioned in the plaint, and to tax

THE FOURTH SCHEDULE—*continued.*

the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interests as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into Court such principal, interests and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said lien] be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE FOR FORECLOSURE.

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum which was on the day of last declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaintiff mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of

It is ordered that the defendant do stand absolutely, debarred of all right to redeem the said mortgaged premises.

a-a In No 129, substitute the words "Decree absolute" for "Final Decree" in place to which the Transfer of Property Act, 1882, extends—sec Act IV of 1882, s. 87, and *supra*, s. 3.

THE FOURTH SCHEDULE—*continued.*

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say.—

In creditor's suit.

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suit by legatees.

2. An account be taken of the legacies given by the testator's Will.

In suits by next-of-kin—

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [*or one of the next-of-kin*] of the intestate.

[After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold, accordingly, and the proceeds paid into Court.

8. And that Mr. E. F. be Receiver in the suit (*or proceeding*), and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar (and shall give security by bond for the due performance of his duties to the amount of rupees).

9. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit then the following further inquiries be made, and accounts, taken, that is to say—

THE FOURTH SCHEDULE—*continued.*

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof.
- (c) an account so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale herein-after directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinafter directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And lastly it is ordered, that this suit [or matter] stand adjourned for making final decree to the day of .

[Such part only of this order is to be used as is applicable to the particular case.]

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure. •

1. It is ordered that the defendant do on before the day of pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest at the rate of Rs. per centum per annum, from the day of to the day of , amounting together to the sum of Rs. .

THE FOURTH SCHEDULE—*continued.*

2. Let the Registrar [*or* Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a)—The costs of the plaintiff to Mr. _____, his attorney [*or* pleader], and the costs of the defendant to Mr. _____, his attorney [*or* pleader].

(b) And (*if any debts are due*) with the residue of the said sum of Rs _____ after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the _____ schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the _____ schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. _____ bequeathed to the plaintiff.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within _____ weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. _____, the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

THE FOURTH SCHEDULE—*continued*.

2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

- (a) Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(Title.)

It is declared that the partnership in the the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, &c.

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock in trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

THE FOURTH SCHEDULE—*continued.*

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of . . .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF . . . AT
Civil Suit No.

A. B. of
against
C. D. of

It is ordered that the fund now in Court, amounting to the sum of Rs. . . . , be applied as follows.—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. . . . to the plaintiff as his share of the partnership assets, of the sum of Rs. . . . , being the residue of the said sum of Rs. . . . now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. . . . be paid to be said plaintiff [or defendant] in part-payment of the sum of Rs. . . . certified to be due to him in respect of the partnership-accounts.]

And that the defendant *[or plaintiff]* do on or before the . . . day of . . . pay to the plaintiff *[or defendant]* the sum of Rs . . . being the balance of the said sum of Rs. . . . due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

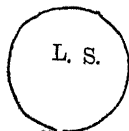
IN THE COURT OF . . . AT
Civil suit No. . . . of 18 .

A. B. of
against
C. D. of

THE FOURTH SCHEDULE—*continued*.

CERTIFIED that no [or partial, as the case may be, and if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of
18



Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18

Miscellaneous, No.

of 18

A. D. of

against

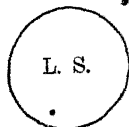
C. D. of

To

WHEREAS

has made application to this Court for execution
of decree in Civil Suit No. 18 , this is to give you
notice that you are to appear before this Court
on the day of 18 , either in
person, or by a pleader of this Court, or agent duly authorized and
instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court this day of
18.



Judge.

THE FOURTH SCHEDULE—*continued*.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S
POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS
of this Court, passed on the _____ day of _____ 18____
, in Suit No. _____ of _____ 18____
to pay to the plaintiff the sum of Rs. _____ as noted in the

DECREE.			
Principal			
Interest			
Costs.			
Costs of decree . .			
Interest thereon .			
Total of attachment			
Total .			

margin; and whereas
the said sum of Rs. _____
has not
been paid.

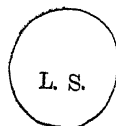
THESE ARE TO
COMMAND YOU to attach
the moveable property
of the said

as set
forth in the list here-
unto annexed, or which
shall be pointed out to
you by the said

_____, and unless the said
_____ shall pay to you the said sum of Rs. _____,
together with Rs. _____, the costs of this attach-
ment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this Warrant on or
before the _____ day of _____ 18____, with an endorse-
ment certifying the date and manner in which it has been executed, or
why it has not been executed.

GIVEN under my hand and the seal of the Court, this
_____ day of _____ 18____.

Schedule.*Judge.*

THE FOURTH SCHEDULE—*continued.*

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &c.

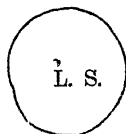
Section 263 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS in the occupancy of
 has been decreed to , the plain-
 tiff in this suit: you are hereby directed to put the said
 in possession of the same, and you are hereby authorized to re-
 move any person *bound by the decree* who may refuse to vacate
 the same.

GIVEN under my hand and the seal of the Court, this
 day of 18 .

*Judge.*

No. 138.

ATTACHMENT IN EXECUTION.

Prohibitory Order, where the Property to be attached consists of
 moveable Property to which the Defendant is entitled subject to
 a Lien or Right of some other Person to the immediate possession
 thereof.

Section 268 of the Code of Civil Procedure.

(Title.)

•To

WHEREAS

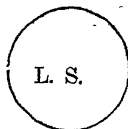
has failed to satisfy a decree passed against , on
 the day of 18 in favour of
 for Rs. : it is ordered
 that the defendant be, and is hereby, prohibited and restrained, until
 the further order of this Court, from receiving from
 the following property in the possession of the said ,
 that is to say,
 to which the defendant,
 is entitled, subject to any claim of the said
 and the said is hereby prohibited and restrained

** These words in form No- 137 were added by Act VII of 1885, s. 64.

THE FOURTH SCHEDULE—*continued.*

until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this
day of 18



Judge.

No. 139.

Attachment in Execution.

Prohibitory Order, where the Property consists of Debts not secured by Negotiable Instruments.

Section 268 of the Code of Civil Procedure.

(*Title.*)

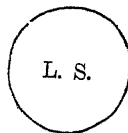
To

Whereas

has failed to satisfy a decree passed against
on the day of 18, in Civil
Suit, No. of 18, in favour of
for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,

and
that you, the said
and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this
day of 18 .



Judge.

THE FOURTH SCHEDULE—*continued.*

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN
A PUBLIC COMPANY, &c.

Section 268 of the Code of Civil Procedure.

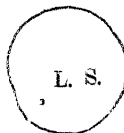
(*Title.*)

To
Defendant, and to _____, Manager of
Company.

WHEREAS
has failed to satisfy a decree passed against
on the _____ day of _____ 18____,
in Civil Suit, No. _____ of 18____, in favour
of _____ for Rs. _____

: it is ordered that you, the defendant, be and
you are hereby, prohibited and restrained, until the further order of
this Court, from making any transfer of
shares in the aforesaid Company, namely,
or from receiving payment of any
dividends thereof and you
_____, the Manager of the said Company, are hereby prohibited and
restrained from permitting any such transfer or making any such
payment.

GIVEN under my hand and the seal of the Court, this _____ day
of _____ 18____.



Judge.

—
No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE
PROPERTY.

Section 274 of the Code of Civil Procedure.

(*Title.*)

To
Defendant.

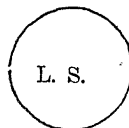
THE FOURTH SCHEDULE—*continued.*

WHEREAS you have failed to satisfy a decree passed against you on
 the day of 18 , in Civil Suit,
 No. of 18 , in favour of
 , for Rs.

it is ordered that you, the said
 be, and you are hereby, prohibited and restrained, until the further
 order of this Court from alienating the property specified in the
 schedule hereunto annexed, by sale, gift or otherwise, and that all
 persons be, and that they are hereby, prohibited from receiving the
 same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this
 day of 18 .

Schedule.



Judge.

No 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY
 OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE
 OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18

 A. B. of
 against
 C. D. of

To

SIR,

THE plaintiff having applied under section of the
 Code of Civil Procedure, for an attachment of certain money now in
 your hands (*here state how the money is supposed to be in the hands of the*

THE FOURTH SCHEDULE—*continued.*

person addressed, on what account, &c.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S.

Judge.

Dated the day of 18

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &C., OF MONEY, &C., IN THE
HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

Miscellaneous, No. of 18

A. B. of

against

C. D. of

To the Bailiff, of the Court and to

Whereas the following property has
been attached in execution of a decree in Civil Suit, No. of
18 18, passed on the day of
18 , in favour of , for Rs. ; it is
ordered that the property so attached, consisting of Rs. in
money, and Rs. in Currency notes, or a sufficient part thereof
to satisfy the said decree, shall be paid over by you the said
to , and the said property, so
far as may necessary for the satisfaction of the said decree, shall be
sold by you, the Bailiff of the Court, by public auction in the manner
prescribed for sale in execution of decrees, and
that the money which may be realized by such sale, or a sufficient part
thereof to satisfy the said decree, shall be paid over to the said
and the remainder, if any, shall be paid to you, the said

THE FOURTH SCHEDULE—continued.

-GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. _____ of 18____

Miscellaneous, No. of 18

A. B. of

against

C. D. of

To

WHEREAS _____ has made application to this Court for the removal of attachment on _____ placed at your instance in execution of the decree in Civil Suit, No. _____ of 18_____, this is to give you notice to appear before this Court on _____, the _____ day of _____ 18_____, either in person or by a pleader of the Court duly instructed, to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this
day of 18

51

Judge.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE
FOR MONEY.

Section 287 of the Code of Civil Procedure.

THE FOURTH SCHEDULE—*continued.*

IN THE COURT OF	AT
Civil Suit, No.	of 18
Miscellaneous, No.	of 18
	<i>A. B. of</i>
	<i>against</i>
	<i>C. D. of</i>

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving
 days' previous notice, by affixing the same in this court-house, and
 after making due proclamation,* the
 property attached under a warrant from this Court dated the
 day of 18 , in execution of a decree in favour of
 in suit No. of 18 , or so much of the said property
 as shall realize the sum of Rs. , being the of the said
 decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the
day of 18 , with an endorsement certifying the man-
ner in which it has been executed, or the reason why it has not been
executed.

GIVEN under my hand and the seal of the Court, this day of
18 .

L. S.

Judge.

* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered and as fully and accurately as possible the other particulars required by section 287 to be specified.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN
EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18

A. B. of
against
C. D. of

THE FOURTH SCHEDULE—*continued.*

To

WHEREAS

has been the purchaser at a sale by auction in execution of the decree
 in the above suit of now in your possession, you are
 hereby prohibited from delivering possession of the said
 to any person except the said

GIVEN under my hand and the seal of the Court, this day of
 18


 L. S.
Judge.

 No. 147.

Prohibitory Order against Payment of Debts sold in Execution to
 any other than the Purchaser.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18

A. B. of
against
C. D. of

To

WHEREAS

and to

has become the purchaser at a public sale in
 execution of the decree in the above suit of
 certain debt

due from you to you that is to say,
 , it is ordered that you be, and you are hereby
 prohibited, from receiving, and you from making
 payment of the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this
 day of 18 ,


 L. S.
Judge.

THE FOURTH SHEDULE—continued.

No. 148.

Prohibitory Order against the Transfer of Shares sold in Execution.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B. of
against
C. D. of

To

and Manager of Company.
WHEREAS has become the pur-

WHEREAS _____ has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Company, that is to say, of _____ standing in the name of you _____

it is ordered that you be, and you are hereby prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon; and you

from permitting any such transfer or making any such payment to any person except the said _____, the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this
day of 18 .

LD

Judge.

No. 149.

Order confirming Sale of Land, &c.

Section 312 of the Code of Civil Procedure.

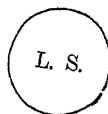
In the Court of _____ at _____
 Civil Surt, No. _____ of 18____
 A. B. of _____
against
 C. D. of _____

THE FOURTH SCHEDULE—*continued.*

Whereas the following land [or immoveable property] was on the _____ day of _____ 18____ sold by the Bailiff of this Court in execution of the decree in this suit; and whereas _____ days have elapsed and no application has been made [or objection allowed] to the said sale, it is ordered that the said sale be and the said sale is hereby, confirmed.

Given under my hand and the seal of the Court, this _____ day of _____ 18____ .

Schedule.



Judge.

No. 150.

Certificate of Sale of Land.

Section 316 of the Code of Civil Procedure..

In the Court of _____ at _____

Civil Suit, No. _____ of 18____ .

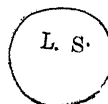
A. B. of

against

C. D. of

This is to certify _____ has been declared the purchaser at sale by public auction on the _____ day of _____ 18____ of _____ in execution of decree in this suit, and that the said sale has been duly confirmed by the Court. _____

Given under my hand and the seal of the Court, this _____ day of _____ 18____ .



Judge.

THE FOURTH SCHEDULE—*continued.*

No. 151.

Order for Delivery to certified Purchaser of Land at a Sale in Execution.

Section 318 of the Code of Civil Procedure.

In the Court of _____ at _____

Civil Suit, No. _____ of 18 ____.

A. B. of

against

C. D. of

To the Bailiff of the Court.

Whereas _____ has become the certified purchaser of _____ at a sale in execution of the decree in Civil Suit, No. _____ of 18 ____; and where- as such land is in the possession of _____, you are hereby ordered to put the said the certified purchaser, as aforesaid, into possession of the said _____ and if need be, to remove any person who may refuse to vacate the same.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.


 L. S.
Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

Civil suit No. _____ of 18 ____.

In the Court of _____ at _____.

A. B. of

against

C. D. of

THE FOURTH SCHEDULE—*continued.*

To
SIR,

Collector of

In answer to your communication No. , dated , representing that the sale in execution of the decree in this suit of , and, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,

SIR,

Your obedient Servant,

L. S.

Judge.

No 153.

Order for Committal for Resisting, &c., Execution of Decree for Land.

Section 329 of the Code of Civil Procedure.

(*Title*).

To
WHEREAS it appears to the Court that has without just cause resisted [or obstructed] the execution of the decree of the Court passed against on the day of 18 , in Civil Suit, No. of 18 , whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

THE FOURTH SCHEDULE—*continued.*

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT
 Civil Suit, No. of 18
 Miscellaneous, No. of 18
 A. B. of
 against
 C. D. of

TO THE BAILIFF OF THE COURT.

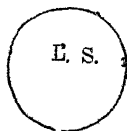
WHEREAS was adjudged by a decree of
 the Court, in No. of 18, dated 18, to pay to the
 plaintiff the sum of Rs.

Principal	...			
Interest	...			
Costs	...			
Execution	...			
TOTAL	...			

as noted in the margin, and
 whereas the said sum of Rs.
 has not been paid to
 the said plaintiff in satisfaction
 of the said decree, these are
 to command you to arrest
 the said defendant and unless
 the said defendant shall pay
 to you the said sum of Rs.

, together with Rs. for the costs of
 executing this process, to bring the said defendant before the Court
 with all convenient speed. You are further commanded to return this
 warrant on or before the day of 18, with an endorse-
 ment certifying the day and manner in which it has been executed,
 or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day
 of 18.

*Judge.*

THE FOURTH SCHEDULE—*continued*.

No. 155.

Notice of Payment into Court.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF

B. No.

18

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X. Z.,

the Plaintiff's Pleader

Z.,
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B. of

against

C. D. of

To

WHEREAS the evidence of is required by the
in the above suit ; and whereas you are requested to
take the examination on interrogatories [or viva voce] of such witnesses
and you are hereby appointed a Commissioner for
that purpose, and you are further requested to make return of such
examination so soon as it may be taken [process to require the atten-
dance of the witness will be issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day of
18

L. S.

Judge.

* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE—*continued.*

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18

A. B. of

against

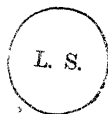
C. D. of

To

WHEREAS it is deemed requisite, for the purpose of this suit, that a commission for should be issued; you are hereby appointed Commissioner for the purpose of [process to compel the attendance before you of any witness, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application.]*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

*Judge.*

No. 158.

WARRANT OF ARREST BEFORE JUDGEMENT

Section 478 of the Code of Civil Procedure

IN THE COURT OF

AT

Civil Suit, No.

of 18

* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE—*continued.*

A. B. of

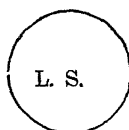
against

C. D. of

To THE BAILIFF OF THE COURT.

WHEREAS , the plain-
tiff in the above suit, has proved to the satisfaction of the Court
that there is probable cause for believing that the defendant
is about to , these
are to command you to take the said
into custody, and to bring be-
fore the Court, in order that he may show cause why he should not
furnish security to the amount of rupees for
personal appearance before the Court, until such time as the said
suit shall be fully and finally disposed of, and until execution or
satisfaction of any decree that may be passed against
in the suit.

GIVEN under my hand and the seal of the Court, this day of
18

*Judge.*

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit No.

of 18

A. B. of

against

C. D. of

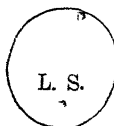
To

WHEREAS , plaintiff in
this suit, has made application to the Court that security be taken for
the appearance of the

THE FOURTH SCHEDULE—*continued.*

defendant to
 answer any judgment that may be passed against
 in the suit; and whereas the Court has called upon
 the defendant to furnish such security,
 or to offer a sufficient deposit in lieu of security, which
 has failed to do; it is ordered that the said defendant
 be committed to custody
 until the decision of the suit; or, if judgment be given against
 , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this
 day of 18 .



Judge.

No 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR
 SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT
 Civil Suit, No. of 18 .
 A. B. of
 against
 C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS has proved
 to the satisfaction of the Court that the defendant in the above suit
 these are to command you to call upon
 the said defendant or before
 the day of either to
 furnish security for the sum of rupees to
 produce and place at the disposal of this Court when required
 or the value
 thereof, or such portion of the value as may be sufficient to fulfil any
 decree that may be passed against
 , or to appear and show cause why should not

THE FOURTH SCHEDULE—continued.

furnish security; and you are further ordered to attach the said _____ and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 161

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO
FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF
CIVIL SUIT, No. of 18 AT

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS _____, the plaintiff in this suit, has applied to the Court to call upon _____, the defendant, to furnish security to fulfil any decree that may be passed against _____ in the suit, and whereas the Court has called upon the said _____ to furnish such security which _____ has failed to do _____; these are to command you to attach _____ the property of the said _____ and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of
- 18

L. S.

Judge.

THE FOURTH SCHEDULE—*continued*.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY, ORDER WHERE THE PROPERTY TO BE ATTACHED
 CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS
 ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS
 TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil suit, No.

of 18

A. B. of

, against

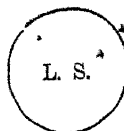
C. D. of

To

defendant.

It is ordered that you, the said , be, and
 you are hereby, prohibited and restrained until the further order of
 this Court from receiving from the following
 property in the possession of the said that is
 to say, to which the defendant is entitled, sub-
 ject to any claim of the said and the said
 is hereby prohibited
 and restrained, until the further order of this Court, from delivering
 the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day
 of 18

*Judge.*

THE FOURTH SCHEDULE—continued.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF
Civil Suit, No.

AT
of 18
A. B. of
against
C. D. of

Te

Defendant.

It is ordered that you, the said _____, be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this
day of 18 .

schedule.

L. S.

Judge.—

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY-ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

THE FOURTH SCHEDULE—*continued*.

Civil suit, No. of 18 .
 A. B. of
 against
 C. D. of

To

It is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands belonging to the said defendant or debts, *as the case may be, describing them*] and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of
 18 .



L. S.

Judge.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN
 A PUBLIC COMPANY, &c.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 . .

A. B. of

against

C. D. of

To

Defendant and to
 Manager of

Company.

THE FOURTH SCHEDULE—*continued.*

It is ordered that
 , the defendant, be, and
 hereby, prohibited and restrained, until the further
 order of the Court, from making any transfer of
 shares, being _____ in the aforesaid
 Company, or from receiving payment of any dividends thereof, and you
 Manager of the said Company, are
 hereby prohibited and restrained from permitting any such transfer, or
 making any such payment.

GIVEN under my hand and the seal of the Court, this day of
 18

L. S.

Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by _____, Pleader of [or
 Counsel for] the plaintiff *A. B.*, and upon reading the petition of the
 said plaintiff in this matter filed [this day] or [the plaint filed in
 this cause on the _____ day of _____, or the written
 statement of the said plaintiff filed on the
 _____ day of _____] and upon
 hearing the evidence of _____ and
 _____ in support thereof, [if after notice
 and defendant not appearing: add, and also the evidence of _____
 as to service of notice of this motion
 upon the defendant, *C. D.*]. This Court doth order that an injunction
 be awarded to restrain the defendant, *C. D.*, his servants, workmen
 and agents from pulling down, or suffering to be pulled down, the
 house in the plant in the said suit of the plaintiff mentioned [or in

THE FOURTH SCHEDULE—continued.

the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned] being No. 9, Oilmongers Street Hindupur, in the Taluk of _____, and from selling, the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this _____ day of _____ 18 .

Civil Judge.

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*

to restrain the defendants

and _____ from parting with out

of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the _____, &c., mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this cause, or until the further order of this Court.

[*In Copy right cases*] _____ to restrain the defendant, *C. D.*, his servants, agents or workmen, from printing, publishing or vending a book called _____, or any part thereof, until the, &c.

[*Where part only of a book is to be restrained*]

to restrain the defendant, *C. D.*, his servants, agents or workmen from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or petition* and evidence, &c.,] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled _____ and _____ also that part which is entitled _____

_____ [*or which is contained in page _____*] _____ to page _____ both inclusive] until the _____ &c.

[*In Patent cases*] _____ to restrain the defendant, *C. D.*, his agents, servants and workmen, from making or vending any perforated bricks (*or as the case may be*) upon the principle of the inventions in the plaintiff's plaint [*or petition*, &c., or written statement, &c.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

THE FOURTH SCHEDULE—*continued.*

[*In case of Trademarks*] to
 restrain the defendant, *C. D.*, his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [*or petition, &c.*,] mentioned, or any other labels so contrived or expressed as by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the &c.

[*To restrain a partner from in any way interfering in the business*] to restrain the defendant
C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership-firm of *B. & D.* and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name of or on the credit of the said partnership-firm of *B. & D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money or for the performance of any contract, promise or undertaking until the, &c.

 No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF

AT

A. B. of*against**C. D.* of

TAKE notice that I, *A. B.*, intend to apply at the sitting of the Court at _____ aforesaid, on the _____ day of _____ for an injunction to restrain *C. D.* from further prosecuting a suit

THE FOURTH SCHEDULE—*continued*.

which he has commenced against me in _____, to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be].

Dated this _____ day of _____ 18 ____
To C. D.

A. B.

[N. B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

— — — — —
No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

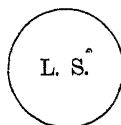
IN THE COURT OF _____ AT _____
Civil Suit, No. _____ of 18 ____
A. B. of _____
against _____
C. D. of _____

To _____
WHEREAS _____ has been attached in execution of a decree passed in the above suit on the _____ day of _____ 18 ____ in favour of _____ : you are hereby (subject to your giving security to the satisfaction of the Registrar) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on _____
You will be entitled to remuneration _____
at the rate of _____ per cent. upon your receipts under the authority of this appointment.

THE FOURTH SCHEDULE—*continued*.

GIVEN under my hand and the seal of the Court, this day of
18 .



Judge.

No 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of
A. B. of
against
C. D. of

Know all men by these presents, that we, I. J. of, &c., and K. L. of &c., and M. N. of, &c., are jointly and severally bound to G. H., *Registrar* of the Court of in Rs to be paid to the said G. H. or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by A. B. against C. D. for the purpose of [*here insert the object of suit*]. .

And whereas the said I. J. has been appointed by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of O. P., the testator in the said plaint named.

Now the condition of the obligation is such, that if the above-bounden I. J. shall duly account for all and every the sums and sums of money which he shall so receive on account of the rents and profits of the immoveable property and in respect of the immoveable property of the said O. P. [*or, as may be*] at such periods as the said Court shall appoint and shall duly pay the balances which shall from time

THE FOURTH SCHEDULE—*continued.*

to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.

K. L.

M. N.

Signed and delivered by the above-bounden in the presence of

Note—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(*T. Ne.*)

To

WHEREAS the above-mentioned plaintiff and the defendant have agreed to refer the matter in difference between them in the above suit to your arbitration and award you are hereby appointed

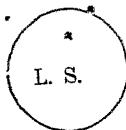
accordingly to determine all the said matters in difference between the parties and with power by consent of the parties to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

THE FOURTH SCHEDULE—continued.

No. 172.

Summons in summary Suit on Negotiable Instrument.

Section 532 of the Code of Civil Procedure.

No. of suit.

In the Court of _____ at _____

To _____

Plaintiff.

Defendant.

[Here enter the defendant's name, description and address.]

Whereas *[here enter the plaintiff's name, description and address]* has instituted a suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for Rs. _____ principal and interest *[or Rs. _____ balance of principal and interest]* due to him as the payee (or endorsee) of a bill of exchange (or hundi or promissory note) of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. *(here state the sum claimed)* and the sum of Rs _____ for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the bill of exchange, hundi or promissory note, and all endorsements upon it.]

No. 173.

Memorandum of Appeal.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(Name, &c., as in Register.) Plaintiff—Appellant. .

(Name, &c., as in Register.) Defendant—Respondent.

[Name of Appellant] (plaintiff or defendant) above-named appeals to the High Court at *[or District Court at _____, as the case may be]* against the decree of _____ in the above suit dated the _____ day of _____, for the following reasons, namely, *(here state the grounds of objection).*

No. 174.

REGISTER OF APPEALS.

Section 548 of the Code of Civil Procedure.

COURT (or HIGH COURT) AT

Register of Appeals from Decrees in the year 18

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what or Amount.

THE FOURTH SCHEDULE.—*continued.*

No. 175.

Notice to Respondent of the Day fixed for the Hearing of the
Appeal.

Section 553 of the Code of Civil Procedure.

In the Court of at

Appellant, v

Respondent

APPEAL from the dated the of the Court of day of 18
Respondent.

To

TAKE notice that an appeal from the decree of
in this case has been presented by
and registered in this Court, and that the
day of 18 has been fixed by this Court for the hearing
of this appeal.

If no appearance is made on your behalf by yourself, your pleader,
or by some one by law authorized to act for you in this appeal, it
will be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this
day of 18

L. S.

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should
be given of the fact on this notice.]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF

AT

, *Appellant* v.

, *Respondent.*

APPEAL from the dated the day of of the Court of 18

MEMORANDUM OF APPEAL.

, *Plaintiff.*

, *Defendant.*

Plaintiff [or defendant] above-named appeals to the
Court at against the decree of in the

THE FOURTH SCHEDULE—*continued.*

above suit, dated the day of 18 , for
the following reasons, namely :—

[here state the reasons].

This appeal coming on for hearing on the day of
18 before , in the presence of
for the Appellant, and of for the
Respondent, it is ordered—

[here state the relief granted].

The costs of this appeal, amounting to , are to be paid
by .

The costs of the original suit are to be paid by
GIVEN under my hand this day of

L. S.

Judge.

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 587 of the Code of Civil Procedure.

HIGH COURT AT

Register of Appeals from Appellate Decrees.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of original Suit and appeal.	Particulars.	Amount or value	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, altered, or reversed.	For what or Amount.

THE FOURTH SCHEDULE—*continued*.

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF

AT

, Plaintiff, v.

, Defendant.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .


 L. S.
Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF

AT

A. B. of

against

C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, A. B. (or C. D.), have hitherto employed as my pleader G. H. of in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is J. K. of .

A. B. (or C. D.)

No. 180.

Memorandum to be placed at foot of every Summons, Notice, Decree or Order of Court, or any other Process of the Court.

Hours of attendance at the office of the Registrar (*place of office*) from *ten* till *four* except on (*here insert the day on which the office will be closed*), when the office will be closed at *one*.

THE
SUCCESSION CERTIFICATE ACT, 1889.

ACT No. VII OF 1889.

An Act to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons ; It is hereby enacted as follows :—

Title, commencement, extent and application.

1. (1) This Act may be called the Succession Certificate Act, 1889.

(2) It shall come into force on the first day of May, 1889 . and

(3) It extends to the whole of British India (inclusive of Upper Burma except the Shan States) ;

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865, or by probate of a will to which the Hindu Wills Act, 1870, applies, or by letters of administration with a copy of such a will annexed

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document, referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “ District Court,” subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the Punjab Courts Act, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge : and

[2] “security” means—

[a] any promissory note, debenture, stock or other security of the Government of India ;

[b] any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India ;

- [c] any stock or debenture of, or share in, a company or other incorporated institution ;
- [d] any debenture or other security for money issued by, or on behalf of, a local authority ;
- [e] any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons

4. (1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or
 - (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,
- except on the production, by the person so claiming of—
- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
 - (ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874, and having the debt mentioned therein, or
 - (iii) a certificate granted under this Act and having the debt specified therein, or
 - (iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or
 - (v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.
- (2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

- (a) the time of the death of the deceased,

- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, the property of the deceased within those limits ;
- (c) the family or other near relatives of the deceased and their respective residences ;
- (d) the right in which the petitioner claims ;
- (e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted : and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

7. (1) If the District Court is satisfied that there is ground for Procedure on entertaining the application, it shall fix a day for the application. hearing thereof and cause notice of the application and of the day fixed for the hearing—

- (a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and
- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit, and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and fitness in other respects, of the applicants.

8. When the District Court grants a certificate, it shall therein Contents of cer- specify the debts and securities set forth in the appli-
tificate cation for the certificate and may thereby empower the person to whom the certificate is granted—

- (a) to receive interest or dividends on, or

- (b) to negotiate or transfer, or
 - (c) both to receive interest or dividends on, and to negotiate or transfer,
- the securities or any of them.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may from time to time on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11 Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

SUCCESSION CERTIFICATE ACT

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13. (1) For articles 11 and 12 of the first schedule to the Amendment of Court-fees Act, 1870, the following shall be substituted, namely —

Number.		Proper fee.
"11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value: provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant
"12. Certificate under the Succession Certificate Act, 1889.	In any case.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.

NOTE.—[1] The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act

Number.		Proper fee.
<p>“12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.</p>	<p>.....</p>	<p>and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of, the security, or for both purposes the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p> <p>(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and</p> <p>(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.”</p>

(2) In the Court-fees Act, 1870, section 19, clause viii, for the words and figures “and certificate mentioned in the First Schedule to this Act annexed, No. 12,” the words and figures “and save as regards debts, and securities, a certificate under Bombay Regulation VIII of 1827” shall be substituted.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870, in respect of the certificate or extension applied for.

Mode of collecting court-fees on certificates.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (3) shall be refunded to the person who deposited it.

Local extent of certificate. 15. A certificate under this Act shall have effect throughout the whole of British India.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate granted or extended by British representative in Foreign State. 17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

Revocation of certificate. 18. A certificate granted under this Act may be revoked for any of the following causes, namely :—

- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case ;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;
- (d) that the certificate has become useless and inoperative through circumstances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal. 19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the persons to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person if such previous grant is in force.

Effect on certificate of previous certificate, probate or letters of administration.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used

Effect of certain probates and letters

in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the state of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865.

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

26. (1) The local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court.

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Notwithstanding anything in the Regulation of the Bombay Code No VIII of 1872, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2)

Number and year.	Subject or title. *	Extent of repeal.
<i>Acts of the Governor General in Council.</i>		
XXVII of 1860.	Collection of debts on successions.	So much as has not been repealed.
XIV of 1869.	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures "Bombay Regulation VIII of 1827" down to and inclusive of the words "representatives of deceased persons and"
XV of 1874.	Laws Local Extent Act, 1874.	So much as relates to Act XXVII of 1860.

THE FIRST SCHEDULE.—*continued.*

Number and year.	Subjects or title.	Extent of repeal
<i>Acts of the Governor General in Council—continued.</i>		
XIII. of 1879.	Oudh Civil Courts Act, 1879.	Section 25, clause (3), relating to the applications for certificates under Act XXVII of 1860.
V of 1881.	Probate and Administration Act, 1881.	Sections 151 and 153
XVIII of 1884.	Punjab Courts Act, 1884	Section 22, sub-section (1), Clause (a).
XII of 1887.	Bengal North-Western Provinces and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c)

Act of the Lieutenant-Governor of Bengal in Council

VII of 1880	Public Demands' Recovery Act, 1880.	In section 7, clause (3), the words "and the note to paragraph 12 of Schedule I."
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THE SECOND SCHEDULE

FORMS OF CERTIFICATE AND EXTENDED
CERTIFICATE.

(See section II.

In the Court of

To A. B.

Whereas you applied on the _____ day of _____ for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

THE SECOND SCHEDULE.—*continued.**Securities.*

Serial. number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of

District Judge.

In the Court of

On the application of *A. B.* made to me on the day of

I hereby extend this certificate to the following debts and securities, namely :—

Debts

Serial number	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

THE SECOND SCHEDULE—continued.

Securities.

Serial. number.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This extension empowers A. B. to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities.]

Dated this day of

District Judge

THE
INDIAN LIMITATION ACT, 1877.

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I. SUITS. II. APPEALS. III. APPLICATIONS.

THE INDIAN LIMITATION ACT.

ACT No. XV OF 1877.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th of July 1877.)

An Act for the Limitation of Suits and for other purposes.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals and certain appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called “The Indian Limitation Act, 1877:”

Extent of Act. It extends to the whole of British India; but nothing contained in sections two and three, or in Parts II and III applies—

(a) to suits under the Indian Divorce Act, or

(b) to suits under Madras Regulation VI of 1831:

Commencement. and it shall come into force on the first day of October 1877.

2. * * * * *

References to Act IX of 1871. * * * all references to the Indian Limitation Act, 1871, shall be read as if made to this Act: and nothing

Saving of titles already acquired. * * * herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.

Interpretation. 3. In this Act, unless there be something repugnant in the subject or context—

‘plaintiff’ includes also any person from or through whom a plaintiff derives his right to sue; ‘applicant’ includes also any person from or through whom an applicant derives his right to apply; and ‘defendant’ includes also any person from or through whom a defendant derives his liability to be sued:

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another :

'bill of exchange' includes also a hundi and a cheque :

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligations shall be void if a specified act is performed, or is not performed, as the case may be :

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

'trustee' does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

'suit' does not include an appeal or an application :

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

'foreign country' means any country other than British India ;

and nothing shall be deemed to be done in good faith, which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made, after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation—A suit is instituted, in ordinary cases, when the plaintiff is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is filed ; and in

the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

Proviso where Court is closed when period expires

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Special and local laws of limitation.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected there-

by, the period within which any suit must be instituted or application made.

Illustrations.

(a.)—The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b.)—A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c.)—A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.)—A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.)—A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased, within which to institute a suit. No extension of time will be given him under this section.

(f.)—A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death, within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

8. When one of several joint-creditors or claimants is under any disability of such disability and when a discharge can be given one joint-creditor without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a.)—A incurs a debt to a firm of which B, C and D are partners. B is insane and C is minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b.)—A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time.

Suits against express trustees and their representatives.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on foreign contracts.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

Foreign limitation law

PART II

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of day on which right to sue accrues.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Exclusion in case of appeals and certain applications

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of Appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it

Exclusion of time of proceeding bona fide in Court without jurisdiction

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

Like exclusion in case of order under Civil Procedure Code, s. 20.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief, shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Like exclusion in case of application.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

Exclusion of time during which commencement of suit is stayed by injunction or order.

15 In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

16 In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale, shall be excluded.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person having right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application (a) against the person guilty of the fraud or accessory thereto, or (b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment in writing of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section "signed" means signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf, or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mort-

Effect of acknowledgment in writing

Effect of payment of interest as such

Effect of part-payment of principal

Effect of receipt of produce of mortgaged land.

One of several joint contractors, &c., not chargeable

by reason of acknowledgment or payment made by another of them.

gagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

Effect of substituting or adding new plaintiff or defendant

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provido where original plaintiff dies

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff;

Provido where original defendant dies

Provided also, that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Continuing breaches and wrongs.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage.

24 In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(a).—A owns the surface of a field. B owns the subsoil B digs coal there-out without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b).—A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby C in consequence refuses to employ B as his clerk The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal

Computation of time mentioned in instruments.

25 All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a).—A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b).—A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of the one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a).—A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right without interruption, from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(b).—In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1875 to 1878. The suit shall be dismissed, as no exercise of the right by actual use has been proved to have taken place within two years next before the institution of the suit.

(c).—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years he asked his leave to enjoy the right. The suit shall be dismissed.

27. Provided, that, when any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination to the said land or water.

Exclusion in favor of reversioner of servient tenement.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B

shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of, any property, his right to such property shall be extinguished.

Extinguishment of right to property.

THE FIRST SCHEDULE.

Repealed by Act XII of 1891.

THE SECOND SCHEDULE.

(See section 4.)

FIRST DIVISION : SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part I— Thirty days.</i>	
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (<i>to provide for the adjudication of claims to waste lands</i>).	Thirty days ...	When notice of the award is delivered to the plaintiff.
	<i>Part II— Ninety days.</i>	
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India	Ninety days ...	When the act or omission takes place.
	<i>Part III.— Six months.</i>	
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.
4.—Under Act No. IX of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers</i>), section one.	Ditto ...	When the wages, hire or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, Chapter XXXIX (<i>of summary procedure on negotiable instruments</i>).	Ditto ...	When the instrument sued upon becomes due and payable.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part IV.—One year.*

Description of suit.	Period of limitation.	Time from which period begins to run.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, No. 4	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered
11.—By a person against whom an order is passed under section 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	Ditto ...	The date of the order.
12.—To set aside any of the following sales:— (a) sale in execution of a decree of a Civil Court ;	One year ...	When the sale is confirmed, or would otherwise have become final and con-

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.*Part IV.—*One year—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
(b) sale in pursuance of a decree or order of a Collector or other officer of revenue,		clusive had no such suit been brought.
(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears;		
(d) sale of a patni taluq sold for current arrears of rent.		
<i>Explanation</i> —In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year	... The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto	... The date of the act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Ditto	... When the attachment, lease or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto	... When the payment is made.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION: SUITS—*continued.**Part IV.—One year—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
17.—Against Government for compensation for land acquired for public purposes.	One year ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation of false imprisonment	Ditto ...	When the imprisonment ends.
20.—By executors, administrators or representatives under Act No. XII of 1855 (<i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i>)	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators or representatives under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>)	Ditto ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel.	Ditto ...	When the libel is published.
25.—For compensation for slander.	Ditto ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part IV.—One year—concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ..	The date of the breach
28.—For compensation for an illegal, irregular or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto .	The date of the seizure

Part V.—Two years

30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto .	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ..	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII of 1855 (to enable executors, administrators or representatives to sue and to be sued for certain wrongs) against an executor, administrator or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife.	Ditto ...	When possession is demanded and refused.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION · SUITS—*continued.**Part V.—Two years—concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
35.—For the restitution of conjugal rights.	Two years ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance or nonfeasance takes place

Part VI.—Three years.

37.—For compensation for obstructing a way or a watercourse.	Three years.	The date of the obstruction.
38.—For compensation for diverting a watercourse	Ditto .	The date of the diversion
39.—For compensation for trespass upon immoveable property.	Ditto ..	The date of the trespass
40.—For compensation for infringing copy-right or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste. . .	Ditto ..	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained. . .	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321, or under the Probate and Administration Act, 1881, Section 139 or 140 to compel a refund by a person to	Ditto ..	The date of the payment or distribution.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
whom an executor or administrator has paid a legacy or distributed assets.		
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Three years ...	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code.—	Ditto ...	The date of the final award or order in the case.
VII of 1822, IX of 1825, and IX of 1833.		
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, chapter XL, or the Bombay Mámlatdárs Courts Act, or by any one claiming under such person, to recover the property comprised in such order	Ditto ..	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully	Ditto ...	When the property is wrongfully taken or injured, or when the

THE SECOND SCHEDULE.—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
taking or injuring or wrongfully detaining the same.		detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Three years ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ..	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto ..	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suits.	Period of limitation.	Time from which period begins to run.
60.—For money deposited under an agreement that it shall be payable on demand.	Three years ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do any thing at a specified time or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
67.—On a single bond where no such day is specified.	Three years ...	The date of executing the bond.
68.—On a bond subject to a condition.	Ditto ...	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand	Ditto ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue	Ditto ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment, as to the part then payable ; and for the other parts the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto ..	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years ...	The date of the delivery to the payee.
77.—On a dishonored foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonored by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto ...	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION: SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument

THE SECOND SCHEDULE—*continued.*FIRST DIVISION SUITS—*continued.**Part VI.—Three years—contd*

Description of suit.	Period of limitation.	Time from which period begins to run.
92.—To declare the forgery of an instrument issued or registered.	Three years	cancelled or set aside become known to him.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff	Ditto	When the issue or registration becomes known to the plaintiff. The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged
96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff
97.—For money paid upon an existing consideration which afterwards fails	Ditto	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto	When the right to contribution accrues.

THE SECOND SCHEDULE.—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
101.—For a seaman's wages.	Three years ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule	Ditto ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Ditto ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surpluss collections received by the mortgagee	Ditto ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and share of the profits of a dissolved partnership	Ditto ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate	Ditto ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee, contrary to the terms of the lease.	Ditto ...	When the trees are cut down.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VI.—Three years—could.*

Description of suits.	Period of limitation.	Time from which period begins to run.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
110.—For arrears of rent ...	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ..	When the call is payable.
113.—For specific performance of a contract.	Ditto ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is

THE SECOND SCHEDULE—*continued.*FIRST DIVISION · SUITS—*continued.**Part VII—Six years.*

Description of suit	Period of limitation.	Time from which period begins to run.
		instituted occurs, or (where the breach is continuing) when it ceases.
<i>Part VII—Six years.</i>		
116.—For compensation for the breach of a contract in writing registered	Six years . .	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Ditto . .	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto . .	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid	Ditto . .	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule	Ditto . .	When the right to sue accrues.
<i>Part VIII.—Twelve years.</i>		
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a <i>patti taluq</i> or other saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION . SUITS—*continued.**Part VIII.—Twelve years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
122.—Upon a judgment obtained in British India, or a recognizance.	Twelve years ...	The date of the judgment or recognizance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto ...	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> — An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Ditto ..	The date of the alienation.
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THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VIII.—Twelve years—contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
127.—By a person excluded from joint-family property to enforce a right to share therein.	Twelve years ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto ...	When the right is denied.
130.—For the resumption or assessment of rent-fee land.	Ditto ...	When the right to resume or assess the land first accrues.
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132.—To enforce payment of money charged upon immoveable property. <i>Explanation.</i> —The allowance and fees respectively called <i>malikana</i> and <i>haqq</i> s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.	Ditto ...	When the money sued for becomes due.
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository or pawnee for a valuable consideration.	Ditto ...	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and	Ditto ...	Ditto.

THE SECOND SCHEDULE,—*continued.*FIRST DIVISION : SUITS—*continued.**Part VIII.—Twelve years—conclud.*

Description of suit.	Period of limitation.	Time from which period begins to run.
134.—afterwards purchased from the trustee or mortgagee for a valuable consideration.	Twelve years.	
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto	... When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto	... When the vendor is first entitled to possession.
137.—Like suit by a purchaser at sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto	... When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of sale.	Ditto	... The date of the sale.
139.—By a landlord to recover possession from a tenant.	Ditto	... When the tenancy is determined.
140.—By a remainder-man, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Ditto	... When his estate falls into possession.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*continued.**Part VIII.—Twelve years—conclud.*

Description of suit.	Period of limitation.	Time from which period begins to run.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years ...	When the female dies.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto ...	When the possession of the defendant becomes adverse to the plaintiff.

** Part IX.—Thirty years.*

145.—Against a depository or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage debt.

THE SECOND SCHEDULE—*continued.*FIRST DIVISION : SUITS—*concluded.**Part X.—Sixty years.*

Description of suit.	Period of limitation.	Time from which period begins to run.
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto ...	When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

SECOND DIVISION : APPEALS.

150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days.	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort	Twenty days.	The date of the decree or order.

THE SECOND SCHEDULE—*continued.*SECOND DIVISION : APPEALS—*concluded.*

Description of suit.	Period of limitation.	Time from which period begins to run.
William, Madras and Bombay, or the Chief Court of the Punjab,* in the exercise of its original jurisdiction.		
152.—Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure, to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code, to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure, to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure, from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

THIRD DIVISION : APPLICATIONS

158.—Under the Code of Civil Procedure, to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under chapter XXXIX of the Code of Civil Procedure.	Ditto ...	When the summons is served.
160.—For an order under section 629 of the same Code, restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.

* See Act XVII of 1877, s. 12.

THE SECOND SCHEDULE—*continued.*
THIRD DIVISION . APPLICATIONS—*continued.*

Description of suit.	Period of limitation.	Time from which period begins to run.
160A.—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes, when exercising that jurisdiction.	Fifteen days ...	The date of the decree or order.
161.— * * * * *	* *	* * *
No. 161 has been transposed and made No. 178A and the period of limitation has been changed from 20 to 90 days—See Act VIII of 1881, Sec 66 (1).		
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, or the chief Court of the Punjab,* in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
163.—By a plaintiff, for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.
164.—By a defendant, for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure, by a person dispossessed of immovable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dis-possession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity	Ditto ...	The date of the sale.

* See Act XVII of 1877, s. 12.

THE SECOND SCHEDULE—*continued.*THIRD DIVISION : APPLICATIONS—*continued.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.</p> <p>The words "or on the ground that the decree-holder has purchased without the permission of the Court" were added by Act XII of 1879, sec. 108.</p> <p>167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.</p> <p>168.—For re-admission of an appeal dismissed for want of prosecution.</p> <p>169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.</p> <p>170.—For leave to appeal as a pauper.</p> <p>171.—Under section 371 of the Code of Civil Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.</p> <p>This No 171 has been substituted for No. 171C by Act VII of 1888, s. 66 (3).</p> <p>172.—By a purchaser at an execution-sale, to set aside the sale on the ground</p>	<p>Thirty days.</p> <p>Ditto</p> <p>Ditto.</p> <p>Ditto</p> <p>Sixty days</p> <p>Ditto</p>	<p>The date of the resistance, obstruction or dispossession.</p> <p>The date of the dismissal.</p> <p>The date of the decree in appeal.</p> <p>The date of the decree appealed against.</p> <p>The date of the order for abatement or dismissal.</p> <p>The date of the sale.</p>

THE SECOND SCHEDULE—*continued.*
THIRD DIVISION : APPLICATIONS—*continued.*

Description of suit.	Period of limitation.	Time from which period begins to run.
that the person whose interest in the property purported to be sold had no saleable interest therein.		
173.—For a review of Judgment, except in the cases provided for by No. 160A and No 162.	Ninety days ...	The date of the decree, or order.
173A.—For the issue of a notice under section 258 of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Ditto ...	When the payment or adjustment is made.
174.—By a creditor of an insolvent judgmentdebtor, under section 353 of the Code of Civil Procedure.	Ditto ...	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
175A.—Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.	Ditto ...	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.
Arts. 175A, 175B and 175C have been inserted by Act VII of 1888.		
175B.—Under section 366 of the Code of Civil Procedure by a defendant, or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.	Ditto ...	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.

THE SECOND SCHEDULE—*continued*.
THIRD DIVISION . APPLICATIONS—*continued*.

Description of suit.	Period of limitation.	Time from which period begins to run.
175C.—Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 532 of the same Code to have the legal representative of a deceased plaintiff-respondent, or defendant-respondent made a plaintiff respondent or defendant-respondent.	Six months ...	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant respondent.
176.—Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court.	Ditto ...	The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto ...	The date of the decree appealed against.
178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230	Three years ...	When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No.180 or by the Code of Civil Procedure, section 230.	Ditto ; or, where a certified copy of the decree or order has been registered, six years.	1.—The date of the decree or order, or 2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3 (where there has been a review of judgment) the date of the decision passed on the review, or 4 (where the application next herein-

THE SECOND SCHEDULE—*continued*.
THIRD DIVISION : APPLICATIONS—*continued*.

Description of suits.	Period of limitation.	Time from which period begins to run.
		<p>after mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or</p> <p>6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.</p> <p>The words "certain date such date" have been substituted for the words "specified date, the date so specified" by Act XII of 1879, s. 108.</p> <p><i>Explanation</i></p> <p>1.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the</p>

THE SECOND SCHEDULE—*continued*.
THIRD DIVISION : APPLICATIONS—*continued*.

Description of suit.	Period of limitation.	Time from which period begins to run.
		<p>application mentioned in clause 4 of this number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against.</p> <p>But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them,</p>

THE SECOND SCHEDULE—*continued*.THIRD DIVISION : APPLICATIONS—*continued*.

Description of suit.	Period of limitation	Time from which period begins to run.
<p>180—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.</p>	<p>Twelve years ...</p>	<p>or against his or their representatives shall take effect against them all</p> <p><i>Explanation</i> II—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p> <p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right :</p> <p>Provided, that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve</p>

THE SECOND SCHEDULE—*concluded.*THIRD DIVISION : APPLICATIONS—*concluded.*

Description of suit.	Period of limitation.	Time from which period begins to run.
		years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

THE
TRANSFER OF PROPERTY ACT, 1882.

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THE
TRANSFER OF PROPERTY ACT.

ACT NO. IV OF 1882.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor-General on the 17th February, 1882

An Act to amend the law, relating to the Transfer of
Property by act of Parties.

WHEREAS it is expedient to define and amend certain parts
Preamble. of the law relating to the transfer of property by act
of parties ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Transfer of Pro-
perty Act, 1882."

Commence- It shall come into force on the first day July, 1882 ;
ment.

It extends in the first instance to the whole of British India except
Extent the territories respectively administered by the
Governor of Bombay in Council, the Lieutenant-
Governor of the Panjab and the Chief Commissioner of British Burma.

But any of the said Local Governments may, from time to time,
by notification in the local official Gazette, extend this Act to the
whole or any specified part of the territories under its administration.

*And any Local Government may, with the previous sanction of
the Governor General in Council from time to time, by notification
in the local official Gazette, exempt, either retrospectively or pros-
pectively, any part of the territories administered by such Local
Government from all or any of the following provisions namely.—
"Sections fifty-four, paragraphs two and three, fifty-nine, one
hundred and seven and one hundred and twenty-three "

†Notwithstanding anything in the foregoing part of this section,
sections fifty-four, paragraphs two and three, fifty-nine, one hundred
and seven and one hundred and twenty-three shall not extend or be

* Substituted by Act III of 1885, s. 1.

† Added by Act III of 1885, s. 2.

extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(a) the provisions of any enactment not hereby expressly repealed :

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or

(d) save as provided by section fifty-seven and chapter four of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction : and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation clause.

3. In this Act, unless there is something repugnant. in the subject or context,—

"Immoveable property."

"Immoveable property" does not include standing timber, growing crops or grass :

"Instrument."

"Instrument" means a non-testamentary instrument.

"registered"

means registered in British India under the law for the time being in force regulating the registration of documents :

"attached to the earth."

"attached to the earth" means—

(a) rooted in the earth, as in the case of trees and shrubs ;

(b) imbedded in the earth, as in the case of walls or buildings ; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached :

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or

gross negligence, he would have known it or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

Enactments relating to contracts to be taken as part of Act IX of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

*And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall be read as supplemental to the Indian Registration Act, 1877.

CHAPTER II.

•OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

•(A.)—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and “to transfer property” is to perform such act.

What may be transferred. 6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force :

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be a transferee.

†Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

* Added by Act III of 1885, s 4

† Added by Act III of 1885, s 4

8. Unless a different intention is expressed or necessarily implied, Operation of a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and, where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith ;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him ; provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immovable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that

is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Transfer to such of certain persons as survive at some period not specified.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon ^{Conditional} a condition fails if the fulfilment of the condition is transfer. impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition ^{Fulfilment of condition precedent.} to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with,

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in ^{Conditional transfer to one person coupled with transfer to another on failure of prior disposition.} favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife, but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person, or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Uti-
lior trans-
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tional on
happening
of spec-
ified event
or not hap-
pening

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustrations.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age without C's consent. The transfer to D takes effect.

Prior dispo-
sition not af-
fected by
invalidity of
ulterior dispo-
sition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband to C. B is entitled to the farm during her life as if no condition had been inserted.

Condi-
tion that
transfer shall
cease to have ef-
fect in case spec-
ified uncertain
event happens
or does not
happen.

31. Subject to the provisions of section twelve, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condi-
tion must not be
invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The firm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the firm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—

Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor, and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled

37 When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leases to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this must pay Rs. 15 to B, Rs. $7\frac{1}{2}$ to C, and Rs. $7\frac{1}{2}$ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A, B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all according to such directions as B, C and D may join in giving.

(B)—Transfer of Immoveable Property.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorized only under certain circumstances to transfer.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of

the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Transfer where third person is entitled to maintenance

Illustration.

A, a Hindu, transfers Sultānpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultānpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultānpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

Burden of obligation imposing restriction on use of land,

or of obligation annexed to ownership but not amounting to interest or easement.

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultānpur to B. While the contract is still in force he sells Sultānpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Transfer by person having authority to revoke former transfer.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition, but on B's dying, A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be,

Joint transfer for consideration.

with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for
consideration
by persons
having distinct
interests

Illustration.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Transfer by co-
owners of share
in common prop-
erty

Illustration.

A, the owner of an eight anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights
created by trans-
fer

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs 50, and then transfers the field to C. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immovable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

“Sale” defined. 54. “Sale” is transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Rights and liabilities of buyer and seller. 55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold.

(1) The seller is bound—

(a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same :

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

Provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced unless prevented from so doing by fire, or other inevitable accident ;

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer :

(b) Where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest ,

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer

may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller ;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount ; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Sale of one of
two properties
subject to a
common charge

Discharge of Incumbrances on Sale.

57. (a) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court.

Provision by
Court for
incumbrances,
and sale freed
therefrom

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same and generally may give directions respecting the application or distribution of the capital or income hereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific im-
 moveable property for the purpose of securing the pay-
 ment of money advanced or to be advanced by way
 of loan, and existing or future debt, or the per-
 formance of an engagement which may give rise to a
 pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary,

in payment of the mortgage money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale. (c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or,

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59. When the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagee either to transfer the mortgaged property to him or to such third person as he may direct, or to execute and

(where the mortgage has been effected by a registered instrument) to have an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished :

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid :

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Implied contracts by mortgagor.

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto ;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property :

(d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as

and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts, mentioned in this section, shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to waste by deterioration; but he must not commit any act which is destructive or permanently injurious thereto if the security is insufficient or will be rendered insufficient by such act.

Explanation—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds, by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only :—

Right to sue
for mortgage-
money

- (a) where the mortgagor binds himself to repay the same :
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor :
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-six, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or ^{Power of sale} on any person on his behalf, to sell or concur in selling, when valid. in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases *and in no other* (namely) —

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, for a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local Official Gazette.†

(b) where the mortgagee is the Secretary of State for India in Council ;

(c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi, or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service ; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given; or that the power was otherwise improperly or irregularly exercised ; but any person damaged by an authorized or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The words *—* have been added by Act III of 1885, s. 5 (a)

The words †-† have been added by Act III of 1885, s. 5 (b).

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist* or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the Local Official Gazette.*

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortgagee in possession.

(a) for the due management of the property and the collection of the rents and profits thereof;

(b) for its preservation from destruction, forfeiture or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees, as his mortgagor has against the subsequent mortgagees (if any) as he has against his mortgagor.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own ;

(b) he must use his best endeavours to collect the rents and profits thereof ;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold ;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money ;

(e) he must not commit any act which is destructive or permanently injurious to the property ;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money ;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported ;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money ; the surplus, if any, shall be paid to the mortgagor ;

(i) when the mortgagor tenders, or deposits in manner herein-after provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken by his default in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

77. Nothing in section seventy-six, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagor and the mortgagee that the receipts from

Receipts in lieu
of interest

the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co., of the second mortgage. At the date of the second mortgage, the balance due to B & Co., does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the accounts against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-nine, no mortgage making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mort-

gage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty-one to the claim of the second mortgagee.

Deposit in Court.

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Power to deposit in Court money due on mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Right to money deposited by mortgagor.

84. When the mortgagor or such other person as aforesaid has entered or deposited in Court under section eighty-three the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court as the case may be.

Cessation of interest

Nothing in this section or in section eighty-three shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money,

Suits for Foreclosure, Sale or Redemption.

85. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Parties to suits for foreclosure, sale and redemption

Foreclosure and Sale.

86 In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree.

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

87. If payment is made, of such amount and of such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree" the words "Decree absolute" shall be substituted.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-six, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

88. If any case under section eighty-eight the defendant pays to the plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section eighty-eight; and thereupon the defendant's right to redeem and the security shall both be extinguished.

90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem or institute a suit for redemption of the mortgaged property—

(a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

(b) any person having any interest in, or charge upon, the right to redeem the property;

(c) any surety for the payment of the mortgage-debt or any part thereof;

(d) the guardian of the property of a minor mortgagor on behalf of such minor;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to

him, on the day next hereinafter referred to or declaring the amount so due at the date of such decree ;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property ; and

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property or (unless the mortgage be by conditional sale) that the property be sold.

93. If payment is made of such amount and of such sub-
In case of redemption, possession, sequent costs as are mentioned in section ninety-four, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made, the defendant may (unless the
In default, fore- closure or sale. mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished.

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-two for payment to the defendant.

94. In finally adjusting the amount to be paid to a mortgagee in case
Costs of mortgagee subsequent to decree. of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to

the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

Charge of one of several co-mortgagors who redeems.

Sale of property subject to prior Mortgage.

96. If any property, the sale of which is directed under this chapter, is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Sale of property subject to prior mortgage.

97. Such proceeds shall be brought into Court and applied as follows :—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale ;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage ;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;

fourthly, in payment of the principal money due on account of that mortgage ; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section ninety-six shall be deemed to affect the powers conferred by section fifty-seven.

Anomalous Mortgages.

98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and the third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Mortgage not described in section 58, clauses (b), (c), (d), and (e).

Attachment of Mortgaged Property.

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute

Attachment of mortgaged property.

such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.

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Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty-one and eighty-two and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist or such continuance would be for his benefit.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of

the property of such person, but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money share, service or other thing to be so rendered is called the rent.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor, or lessee, by six month's notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

“ Rights and liabilities of lessor and lessee.

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth : provided he leaves the property in the state in which he received it .

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects so to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. When the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immoveable property determines—
 Determination of lease (a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right.

(e) by express surrender; that it is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or

by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section one hundred and eleven, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(a) A, the lessor, gives B, lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B, as lessee, a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property, does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining

a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section one hundred and fourteen.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one hundred and six.

Illustrations.

(a). A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b). A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council may, by notification published in the local official Gazette, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

120. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.
121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. The donor and the donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to effect the rights of transferees for consideration without notice.

Illustrations.

- (a.) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A dies without descendants in A's lifetime. A may take back the field.

(b.) A gives a lakh of rupees to B, reserving himself, with B's assent, the right to take back at pleasure Rs. 1,000 out of the lakh. The gift hold good as to Rs. 90,000, but is void as to Rs. 10,000 which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation he retains the property given, he becomes so bound.

Illustrations.

(a.) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock company. B refuses to accept the shares in Y. He cannot take the shares in X.

(b.) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section one hundred and twenty-seven, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

129. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section one hundred and twenty-three, any rule of Hindu or Buddhist law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. A claim which the Civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

131. No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party

to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of a transfer, with the debt or property shall be valid as against such transfer.

Illustration.

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

132. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

133. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

134. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

135. Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) Where the sale is made to the co-heir to, or co-proprietor of, the claim sold;

(b) Where it is made to a creditor in payment of what is due to him;

(c) Where it is made to the possessor of a property subject to the actionable claim;

(d) Where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

136. No judge, pleader, mukhtar, clerk, bailiff or other officer connected with Courts of Justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

137. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if re-
 Mortgaged debt covered by either the transferor or transferee, is appli-
 cable, first, in payment of the costs of such recovery; secondly, in or
 towards satisfaction of the amount for the time being secured by the
 transfer; and the residue, if any, belongs to the transferor.

Saving of negotiable instruments. 139. Nothing in this chapter applies to negotiable in-
 struments.

THE SCHEDULE.

(a) STATUTES.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses ...	The whole.
13 Eliz., c. 5 ...	Fraudulent convey- ances ...	The whole.
27 Eliz., c. 4 ...	Fraudulent convey- ances ...	The whole.
Wm. & Mary, c. 16.	Clandestine mort- gages ...	The whole.

(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

IX of 1842 ...	Lease and release ...	The whole.
XXXI of 1854 ...	Modes of conveying land.	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and" and in the preamble "to limit the liability for mesne profits and."
XXVII of 1863 ...	Indian Trustee Act...	Section 31.
IV of 1872 ...	Panjab Laws Act ...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.

THE SCHEDULE.—*continued.*(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*continued.*

Number and year.	Subject.	Extent of repeal.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876 ...	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877 ...	Specific Relief ...	In sections 35 and 36 the words "in writing."

(c) REGULATIONS.

Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts : Interest . Mortgagees in possession.	Section 15.

THE
INDIAN REGISTRATION ACT, 1877.

ARRANGEMENT OF SECTIONS.

PREAMBLE.

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SECTIONS

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Commencement
 2. Repeal of enactments.
 3. Interpretation-clause.
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4. Inspector General of Registration.
Branch Inspector General of Sindh.
 5. Districts and Sub-districts.
 6. Registrars and Sub-Registrars.
 7. Officers of Registrar and Sub-Registrar.
 8. Inspectors of Registration-offices.
 9. Military cantonments may be declared sub-districts or districts.
 10. Absence of Registrar from his district or vacancy in his office.
 11. Absence of Registrar on duty in his district.
 12. Absence of Sub-Registrar or vacancy in his office.
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Government.
Suspension, removal and dismissal of officers.
 14. Remuneration and establishments of registering officers.
 15. Seals of registering officers.
 16. Register-books.
Forms.
Fire-proof boxes.
-

PART III.

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Exception of
composition deeds,

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and of transfers of shares and debentures in Land Companies ;
documents merely creating right to obtain other documents.
Authorities to adopt.

18. Documents of which registration is optional.
19. Documents in language not understood by registering officer.
20. Documents containing interlineations, blanks, erasures or alterations.
21. Description of parcels.
Documents containing maps or plans.
22. Failure to comply with rules as to description of houses and land.

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23. Time for presenting documents.
24. Provision where delay in presentation is unavoidable.
25. Documents executed out of British India.
26. Provision where office is closed on last day of period for presentation.
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28. Place for registering documents relating to land.
29. Place for registering other documents.
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Registration by Registrar at Presidency-town and Lahore.
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33. Powers-of-attorney recognizable for purposes of section 32.
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35. Procedure on admission of execution.
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 PART IX.

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- 42. Deposit of wills.
- 43. Procedure on deposit of wills.
- 44. Withdrawal of sealed cover deposited under section 42.
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 PART X.

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- 47. Time from which registered document operates
- 48. Registered documents relating to property when to take effect against oral agreements
- 49. Effect of non-registration of documents required to be registered.
- 50. Registered documents relating to land, of which registration is optional, to effect against unregistered documents.

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- 51. Register-books to be kept in the several offices.
- 52. Endorsements on document presented.
Receipt for document.
Documents admitted to registration to be copied.
- 53. Entries to be numbered consecutively.
- 54. Current indexes and entries therein.
- 55. Indexes to be made by registering officers.
Extra particulars in indexes.
- 56. Copy of entries in indexes, Nos. I, II and III to be sent by Sub-Registrar to Registrar.
Such copy to be filed by Registrar.

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57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(B). As to the Procedure on admitting to Registration.

58. Particulars to be endorsed on documents admitted to Registration.
 59. Such endorsements to be dated and signed by registering officer.
 60. Certificates showing that document has been registered, and number and page of book in which it has been copied.
 61. Endorsements and certificate to be copied.
 Document to be returned.
 62. Procedure on presenting document in language unknown to registering officer
 63. Power to administer oaths.
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64. Procedure on Registration of document relating to land situate in several sub-districts.
 65. Procedure where document relates to land situate in several districts.

(D). Special Duties of Registrar.

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 67. Procedure on registration under section 30, clause (b).

(E). Of the Controlling Powers of Registrars and Inspectors General.

68. Registrar to superintend and control Sub-Registrars.
 69. Inspector General to superintend registration-office.
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 70. His power to remit fines.

 PART XII.

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71. Reasons for refusal to register to be recorded.
 72. Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.
 73. Application where Sub-Registrar refuses to register on ground of denial of execution.
 74. Procedure of Registrar on such application.
 75. Order to register and procedure thereon.
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- 78. Fees to be fixed by local Government.
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- 81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.
- 82. Penalty for certain other offences.
 - Making false statements before registering officer.
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- 83. Registering officer may commence prosecutions.
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- 85. Destruction of unclaimed documents.
- 86. Registering officer not liable for thing *bonâ fide* done or refused in his official capacity.
- 87. Nothing so done invalidated by defect in appointment or procedure.
- 88. Registration of documents executed by Government officers or certain public functionaries.
- 89. Certificates under Land Improvement Act, 1871.

Exemptions from Act.

- 90. Exemption of certain documents executed by or in favour of Government.
- 91. Inspection and copies of such documents.
- 92. Burmese registration rules confirmed.

THE
INDIAN REGISTRATION ACT.

ACT No. III OF 1877.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor General on the 14th February 1877.

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents ; It is hereby enacted as follows:—
Preamble.

PART I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Registration Act, 1877 :"

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude from its operation.

Local extent. Commence- And it shall come into force on the first day of April ment. 1877.

*The Local Government may, with the previous sanction of the Governor General in Council, cancel any order excluding districts or tracts of country from the operation of the Act.

Repeal of enact- 2. On and from that day Act No. VIII of 1871 shall ments. be repealed.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

"Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context—

"Lease." "Lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :

"Signature." "Signature" and "signed" include and apply to the affixing of a mark :

"Signed "

* Added by Act XII of 1891.

"Immoveable property," includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, but not standing timber, growing crops, nor grass :

"Moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property :

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

"Minor," Minor means a person who, according to the personal law to which he is subject, has not attained majority :

"Representative" includes the guardian of a minor and the committeee or other legal curator of a lunatic or idiot :

"Addition," means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name :

"District Court," "District Court" includes the High Court in its ordinary original civil jurisdiction ; and

"District," and "Sub-district" respectively mean a district and sub-district formed under this Act.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

Inspector General of Registration. 4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

5. For the purpose of this Act, the Local Government shall form Districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether Registrars and Sub-Registrars public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purpose of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector General, and in the case of a district, what authority shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

10. Whenever any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

Absence of Registrar from his district or vacancy in his office.

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district, including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

14 Subject to the approval of the Governor General in Council the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act

15 The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs:—
“The seal of the Registrar (or of the Sub-Registrar) of

16. The Local Government shall provide for the office of every registering officer the books necessary for the purpose of this Act.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in

each book shall be certified on the title-page by the officer by whom such books are issued.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act, came or comes into force (that is to say) :—

(a) Instruments of gift of immoveable property ;
(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and

(d) Leases of immoveable property from year to year, or of any term exceeding one year, or reserving a yearly rent ;

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Exception. Nothing in clauses (b) and (c) of this section applies to

Composition-deeds ; (e) any composition-deed ;

and of transfers of shares and debentures in Land Companies ; (f) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

*(f) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company

* Added by Act VII of 1896.

has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or

(g) any endorsement upon or transfer of any debenture issued by any such Company ;

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or

interest ;

(i) decrees and orders of Courts and awards ;

(j) grants of immoveable property by Government ;

(k) instruments of partition made by revenue-officers ;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871 ;

* (m) orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act.

† (n) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage.

‡ (o) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

Authorities to adopt
Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered

Documents of which registration is optional
18 Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest .

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 .

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title or interest to or in moveable property .

(e) wills .

* Added by Act VII of 1886, s. 3.

† Added by Act VII of 1886, s. 4.

‡ Added by Act VII of 1888, s. 55 (i).

(f) all other documents not required by section 17 to be registered.

19 If any document, duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents
in language not
understood by
registering
officer.

20. The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Documents
containing
interlineations,
blanks, erasures
or alterations

21. (a) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of
parcels.

(b) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Documents
containing
maps or plans.

Failure to com-
ply with rules
as to description
of houses and
land.

22. Failure to comply with the provisions contained in section 21, clause (b), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.

ON THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

Time for pre-
senting docu-
ments

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final :

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

24. If, owing to urgent necessity or unavoidable accident, any document executed or copy of a decree or order made in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

25. When a document purporting to have been executed by all or any of the parties out of British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

27. A will may, at any time, be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

28. Save as this Part otherwise provided, every document mentioned in section 17, clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates, is situate.

29. Every document other than a document referred to in section 28 and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document, desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration by Registrar 30. (a) Any Registrar may, in his discretion, receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(b) The Registrar of a district including a Presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

But such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents for registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office, by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or by the representative or assign of such person, or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers of attorney recognizable for purposes of section 32.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides:

(b) if the principal, at the time aforesaid, resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate.

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India:

Proviso as to persons infirm, or in jail, or exempt from appearing in Court

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section.—

persons who, by reason of bodily infirmity, are unable without risk or serious inconvenience so to attend,

persons who are in jail under civil or criminal process; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance, at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf

34. Subject to the provisions contained in this Part and in sections

41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26

Enquiry before registration by registering officer. — Provided that if, owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper regis-

tration-fee in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed.

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document ;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution ;

or if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be or for any other purpose contemplated by this Act, examine any one present in his office.

Procedure on denial or execution, &c. If any of the persons by whom the document purports to be executed deny its execution, or

*if any such person appears to the registering officer to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead. Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person

Procedure where appear

ance of executant or witness is desired. whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office. 38. A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,

a person in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

Persons entitled to present wills and authorities to adopt. 40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor, or after his death the donee, of any authority to adopt or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt. 41. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

- (a) that the will or authority was executed by the testator or donor, as the case may be ;
 (b) that the testator or donor is dead, and
 (c) that the person presenting the will or authority is, under section 40, entitled to present the same

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent, deposit of wills his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document

43 On receiving such cover, the Registrar, if satisfied that the Procedure on deposit of wills person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5, the superscription aforesaid and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

44 If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly Withdrawal of sealed cover deposited under section 42 authorized agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45 If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense cause the contents thereof to be copied into his Book No. 3.

When such copy has been made, the Registrar shall re-deposit the Re deposit. original will.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of Saving of Act X of 1865, section 259. any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from which registered document operates

Registered documents relating to property when to take effect against oral agreements.

47 A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

49. No document required by section 17 to be registered, shall affect any immovable property comprised there-

Effect of non registration of documents required to be registered

in,
or confer any power to adopt,
or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to land of which registration is optional to take effect, against unregistered documents.

50. Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (e), (f), (ff),* (g), (h), (i), (j), (k), (l), (m),* (n),* and (o),† of the same section.

Explanation.—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place, and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under Act No. VIII of 1871 or this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A). *As to the Register-books and Indexes.*

Register-books to be kept in several offices

51 The following Books shall be kept in the several offices hereinafter named (that is to say)—

* Added by Act VII of 1866, s. 5

† Added by Act VII of 1868, s. 65 (1).

Book 1, "Register of non-testamentary documents relating to immoveable property ;"

Book 2, "Record of reasons for refusal to register ;"

Book 3, "Register of wills and authorities to adopt ;"

Book 4, "Miscellaneous Register."

In the offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89* which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it. a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

53 All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54 In every office in which any of the books hereinbefore mentioned are kept there shall be prepared current indexes of the contents of such books, and every entry in such indexes shall be made so far as practicable, immediately after the registering officer has copied, or filed a memorandum of the document to which it relates.

55. Four such indexes shall be made in all registration-offices, and shall be named respectively, Index No. I, Index No II, Index No III, and Index No. IV.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

*See Act XII of 1879, s. 105.

Index No. III shall contain the names and additions of all persons executing every will and authority entered in book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Extra particulars in Indexes

Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar.

Such copy to be filed by Registrar

Registering officers to allow inspection of certain Books and Indexes and to give certified copies of entries

Indexes Nos. I, II, III and IV shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Every Registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same, and subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies

Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or, to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) *As to the Procedure on admitting to Registration.*

Particulars to be endorsed on documents ad-

58. On every document admitted to registration other than a copy of a decree or order, *or a copy sent to a registering officer under section 89* there shall be en-

The words * to * have been substituted by Act VII of 1886, s. 3 (2) for the words "or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered in" the original Act, or where the Land Improvement Loans Act, 1883, is in force for the words "or a copy of an order under the Land Improvement Loans Act, 1883, sent by the Collector to be registered."

mitted to registration, dorsed from time to time the following particulars (that is to say,—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent.

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

59 The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered, and number and page of Book in which it has been copied.

60. After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21, shall be filed in Book No 1.

Endorsements and certificate to be copied

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated, in writing in that behalf on the receipt mentioned in section 52.

Procedure on presenting document in language unknown to registering officer.

62. When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and together with the copy referred to in section 19, shall be filed in the registration office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of

making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original.

63. Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

He may also at his discretion record a note of the substance of the statement made by each such person and such statement shall be read over, or (if made in a language with which such person is not acquainted,) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C). Special Duties of Sub-Registrar.

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property, not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereupon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No 1.

65. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more than one sub-district, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The Registrar on receiving the same shall file in his book No 1 the copy of the document and the copy of the map or plan (if any) and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate, and every Sub-Registrar receiving such memorandum shall file it in his Book No 1.

(D). Special Duties of Registrar.

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No 1-

67. On any document being registered under section 30, clause (b), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

Procedure on
registration
under section
30, clause (b)

(E). *Of the controlling Powers of Registrars and Inspectors-General.*

68. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate. Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered

Registrar to su-
perintend and
control Sub-
Registrar

Inspector
General to su-
perintend re-
gistration
offices. His
power to make
rules

69 The Inspector General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial divisions shall be recognized under section 21 ; regulating the amount of fines imposed under sections 24 and 24 respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63,

regulating the form in which registering officers are to make memoranda of documents :

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

declaring the particulars to be contained in Indexes Nos. I, II, III, and IV, respectively ;

declaring the holidays that shall be observed in the registration-offices ;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars

The rules so made shall be submitted to the Local Government for approval, and after they have been approved, they shall be published in official Gazette and shall then have the same force as if they were inserted in this Act.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

PART XII.

OF REFUSAL TO REGISTER.

71. Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district,

Reasons for refusal to register to be recorded

shall make an order of refusal and record his reasons for such order in his Book No 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered

72. Except where the refusal is made on the ground of denial of execution an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.

and if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign denies its execution,

any person claiming under such document; or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

- (a) whether the document has been executed ;
- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by Registrar. 76. Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person

executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree : and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES

78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents .

for searching the registers .

for making or granting copies of reasons, entries or documents before, on or after registration .

And of extra or additional fees payable—

for every registration under section thirty .

for the issue of commissions :

for filing translations

for attending at private residences

for the safe custody and return of documents

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

The Local Government may from time to time, subject to the like approval, alter such table

Alteration of fees

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

Publication of fees

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

Fees payable on presentation.

PART XIV. OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies or translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act,

(b) intentionally delivers to a registering officer in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan,

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act :

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar in whose territories, district or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court *or officer exercising powers not less than those of a Magistrate of the second * class.

The words * to * have been substituted for the words " Subordinate Magistrate of the first " by Act XII of 1879, s. 106

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered* in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.

Registering
officers to be
deemed public
servants

84 † Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

PART XV.

MISCELLANEOUS

Destruction of
unclaimed doc-
uments

85 Documents (other than wills) remaining unclaimed in any registration office, for a period exceeding two years, may be destroyed

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim or demand by reason of any thing in good faith done or refused in his official capacity.

Nothing so done
invalidated by
defect in ap-
pointment or
procedure.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

* See Act XII of 1891

† The third para of Sec 84 has been repealed by Act XII of 1891.

89. Every officer granting a certificate under the Land Improvement Act, 1871, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy* in his book No. 1.

*Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole, or any part of the immoveable property comprised in such certificate, is situate, and such officer shall file the copy in his book No. 1.

†Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his book No. 1.

‡Every revenue officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his book No. 1.

Exemptions from Act.

Exemption of certain documents executed by or in favour of Government. 90 Nothing contained in this Act or in Act No. VIII of 1871 or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps.—

(a) Documents issued, received or attested by any officer engaged in making a settlement or division of settlement of land-revenue, and which form part of the records of such settlement.

(b) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c) Documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records.

* See Act XII of 1879 s. 107.

† This para has been added by Act VII of 1886, s. 3

‡ Added by Act XII of 1891.

(n) Sandas, inam title-deeds and other documents purporting to be or to evidence, grants or assignments by Government of land or of any interest in land.

*(e) Notices given under section 74 or section 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy right by occupants, or of alienated land by holders of such land.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 50, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and subject as aforesaid, copies of such documents shall be given to all persons applying for such copies †

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

* Clause (c) has been added by Act VII of 1886, s. 6 (1).

† Added by Act VII of 1886, s. 6 (2).

PART II.

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THE INDIAN SUCCESSION ACT.

ACT No. X OF 1865.

[As modified up to the 1st July, 1890.]

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the
16th March, 1865.)

An Act to amend and define the Law of Intestate and
Testamentary Succession in British India.

WHEREAS it is expedient to amend and define the rules of law
applicable to Intestate and Testamentary Succession
in British India: It is enacted as follows:—

PART I

PREFACE.

- | | |
|--|---|
| Short title. | 1. This Act may be cited as the Indian Succession Act, 1865. |
| Act to constitute law of British India in cases of intestate or testamentary succession. | 2. Except as provided by this Act or by any other law for the time being in force the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession. |
| Interpretation clause | 3. In this Act, unless there be something repugnant in the subject or context,— |
| Number. | words importing the singular number include the plural: words importing the plural number include the singular: and words importing the male sex include females. |
| Gender. | |

"Person."	"person" includes any company or association, or body of persons, whether incorporated or not.
"Year."	"year" and "month" respectively mean a year and
"Month."	month reckoned according to the British calendar.
"Immoveable property."	"immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.
"Moveable property."	"moveable property" means property of every description except immoveable property.
"Province."	"province" includes any division of British India having a Court of the last resort :
"British India."	"British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute
"British India."	21 & 22 Vict., cap. 106 (<i>An Act for the better Government of India</i>). * * * *
"District Judge."	"District Judge" means the Judge of a principal Civil Court of original jurisdiction :
"Minor."	"minor" means any person who shall not have completed the age of eighteen years, and "minority"
"Minority."	means the status of such person
"Will."	"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :
"codicil"	means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is
"Codicil."	considered as forming an additional part of the will.
"probate"	means the copy of a will certified under the seal of a
"Probate."	Court of competent jurisdiction, with a grant of administration to the estate of the testator :
"executor"	means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :
"Executor."	
"Administrator."	"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :
"Local Government."	and in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part ; and

* See Act XII of 1891. † For another definition see Act IX of 1875.

"High Court." "High Court" shall mean the highest Civil Court of appeal therein,* and, for the purposes of sections 242, 242A, 246A and 277A, shall include the Court of the Recorder of Rangoon.*

4 No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

PART II.

OF DOMICILE.

5 Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England and property, both moveable and immovable, in British India. The succession to the whole is regulated by the law of British India.

(b) A, an Englishman, having his domicile in France, dies in British India and leaves property, both moveable and immovable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables.
Domicile of origin of person of legitimate birth.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

* * These words were added by Act XIII of 1875, s. 1.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child. 8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin. 9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile. 10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11 Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Special mode
of acquiring do-
m domicile in British
India

12 A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Domicile not
acquired by resi-
dence as re-
presentative of
foreign Govern-
ment or as part
of his family

Continuance of
new domicile

13 A new domicile continues until the former domicile has been resumed or another has been acquired.

Minor's domi-
cile.

14 The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile ac-
quired by wo-
man on mar-
riage

15 By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domi-
cile during mar-
riage

16 The wife's domicile during the marriage follows the domicile of her husband.

Exception—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acqui-
sition of new
domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

OF CONSANGUINITY.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Person held for purpose of succession to be similarly related to deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;

Mode of computing degrees of kindred.

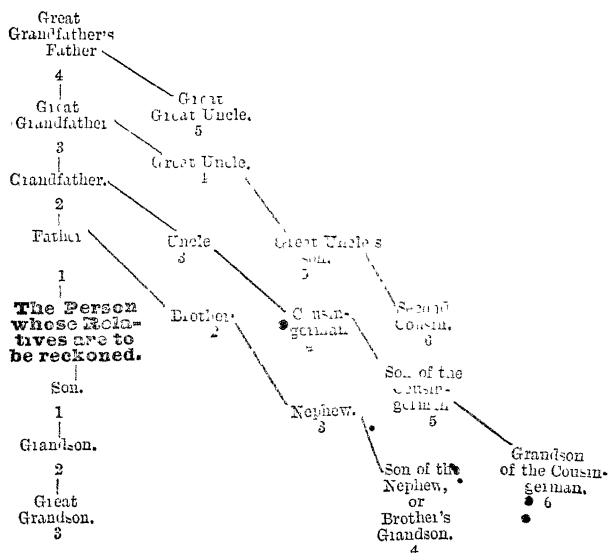
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV.

OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

Where intestate has left widow and lineal descendants, or widow and kindred only or widow and no kindred.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained and if he has left none who are of kindred to him, it shall go to the Crown.
- Where intestate has left no widow, and where he has left no kindred.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) *Where he has left lineal Descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—
- Rules of distribution.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.
- Where intestate has left child or children only

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.
- Where intestate has left no child, but grandchild or grandchildren.

Illustrations.

(a) A has three children, and no more: John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.
- Where intestate has left only great grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one third is allotted to Henry, one-third to John's four children and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c) A has three children, John, Mary and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b) *Where the Intestate has left no lineal Descendants.*

Rules of distribution where intestate has left no lineal descendants.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows :—

Where intestate's father living

35. If the intestate's father be living, he shall succeed to the property.

Where intestate's father dead, but his mother, brothers and sisters living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood. John and Henry and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third and the children of George divide the remaining one-third equally between them.

Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate has left neither lineal descendant nor father nor mother.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(a) A, the intestate, has left a grand father and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(c) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not brought into hotchpot.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property if he die intestate.

Rights of widower and widow respectively.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Effect of marriage between person domiciled and one not domiciled in British India.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

PART VII.

OF WILLS AND CODICILS.

46. Every person of sound mind and not a minor may dispose of his property by will.

Persons capable of making wills.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(c) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary
guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained
by fraud, coercion or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour: such will has been obtained by fraud, and is invalid.

(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f) A, being in so feeble state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace and in submission to B. The will is invalid.

(g) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules.—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the 53rd section. Such wills are called privileged wills.

Illustrations.

(a) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b) A, is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(c) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d) A, a mariner of a ship in the course of a voyage, is temporarily on shore, while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

53. Privileged wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator,

Mode of making, and rules for executing, privileged wills.

it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband :

but the bequest or appointment shall be void so far as concerns the persons so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55. No person, by reason of interest in, or of his being an executor of a will, is disqualified as a witness

Effect of gift
to attesting
witness.

Witness not
disqualified by

interest or by being executor to prove the execution of the will or to prove the validity or invalidity thereof

56 Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Revocation of will by testator's marriage.
Power of appointment defined.

Explanation—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise

Effect of obliteration, interlineation or alteration in unprivileged will
Revocation of privileged will or codicil.

destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

• 60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ;

Revival of unprivileged will

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil

PART XI.

OF THE CONSTRUCTION OF WILLS.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Wording of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Inquiries to determine questions as to object or subject of will

Illustrations.

(a) A, by his will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest ; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator, bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "his seven children," and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator, having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Rejection of erroneous particulars in description of subject.

Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L, shall pass by the bequest.

(b) The testator bequeaths to A "his zamindari of Rampur." He had an estate at Rampur, but it was a taluq and not zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the 65th section are to be considered as struck out of the will.

Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67 Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

(a) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary" It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b) A, by his will, leaves to B "his estate called Sultanpur Khurd. It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary" The bequest is therefore void for uncertainty under the 76th section.

(b) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c) A bequeaths to B rupees, or "his estate of . ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other and for this purpose a codicil is to be considered as part of the will.

Meaning of clause to be collected from entire will.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the

specific fund or property in A for life, and, after his decease in B ; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part, of his will bequeaths Black Acre to B. the latter bequest is to be read as an exception out of the first, as if he had said "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense

When words may be understood in restricted sense, and when in sense wider than usual.

where it may be collected from the will that the testator meant to use them in a restricted sense ; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(a) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of cloths, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind ; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according

Which of two possible constructions preferred.

to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can, be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will

73 If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible. . . .

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the 105th section, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

75 Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(b) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much: this is void.

Words describing subject refer to property answering description at testator's death.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Power of appointment executed by general bequest.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object, he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Implied gift to objects of a power in default of appointment.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs," or "right heirs" or "relations," or "nearest relations," or "family," or, "kindred," "nearest of kin," or "next-of-kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Bequest to "heirs," &c., of particular person without qualifying terms.

Illustrations.

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B, but, if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged to C,

and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Bequest to "representatives," &c., of particular person.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate, an insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest without words of limitation.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in the alternative.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

• 84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Effect of words describing a class added to bequest to a person.

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

Bequest to class of persons under a general description only. 85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms. 86. The word "children" in a will applies only to lineal descendants in the first degree ;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of ;

the words "nephews" and "nieces" apply only to children of brothers or sisters ;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of ;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of ;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of ;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(a) A, having three children, B, C, and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to "the children of B." B is dead, and has left none but illegitimate children. All those who had at the

date of the will acquired the reputation of being the children of B are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

Rules of construction where will purports to make two bequests to same person.

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies, of unequal amount, are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a) A, having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 403 rupees. B is entitled to both legacies.

(i) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution
of residuary
legatees.

Illustrations.

(a) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to
which residuary
legatee entitled.

Illustration.

A by his will bequeaths certain legacies, one of which is void under the 105th section and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator and, if he dies without having received it, it shall pass to his representatives.

Time of vest-
ing of legacy in
general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

In what case
legacy lapses.

Illustrations.

(a) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator: the legacy lapses.

(b) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect in such a case of words showing testator's intention that the shares should be distinct.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any

When bequest to testator's

child or lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A
for benefit of B
does not lapse by
A's death

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship
in case of be-
quest to describ-
ed class

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(c) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children,

E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(e) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(f) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. •The bequest after the death of B is void.

(g) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(h) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100 Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who

marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life ; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void

(d) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed ^{Rule against} may be delayed beyond the life-time of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a) A fund is bequeathed to A for his life ; and after his death to B for his life ; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator ; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B ; and the vesting of the fund may thus be delayed beyond the life-time of A and B and the minority of the sons of B. The bequest after B's death is void.

(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest

at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Illustrations.

(a) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b) A fund is bequeathed to A for his life, and after his death to B, C, D and all other the children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under section 100, 101 or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations

(a) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life,

and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

Effect of direction for accumulation	104. A direction to accumulate the income arising from any property shall be void ; and the property shall be disposed of as if no accumulation had been directed.
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Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death ;

and at the end of the year such property and income shall be disposed of, respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulation, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death

(b) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustrations.

A having a nephew makes a bequest by a will not executed nor deposited as required—

for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;
for the building and repairs of a bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden.

All these bequests are void.

PART XIII.

OF THE VESTING OF LEGACIES.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely

from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(a) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception — Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely

the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(b) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is

contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

OF ONEROUS BEQUESTS.

Onerous bequest. 109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeathed to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and the other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART. XV.

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(e) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

Bequest to such of certain persons as shall be surviving at

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such

some period not specified. of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Illustrations.

(a) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition. 113. A bequest upon an impossible condition is void.

Illustrations.

(a) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(b) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition. 114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to vesting of legacy

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(d) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Request to A and, on failure of prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen the thing bequeathed shall go over to another person.

Bequest over conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the

death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death, equally among her three children or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(c) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations.

(a) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(b) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th section.

Such condition must not be invalid under section 107.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A with a proviso that, it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent within specified time

Further time in case of fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

Illustrations.

(a) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

Legatee named as executor cannot take unless he shows intention to act as executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and

dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

• 129. Where a testator bequeaths to any person a specified part
Specific legacy defined. 1e. of his property, which is distinguished from all other
parts of his property, the legacy is said to be specific.

Illustrations.

(a) A bequeaths to B—

“the diamond ring presented to him by C.”

“his gold chain :”

“a certain bale of wool :”

“a certain piece of cloth :”

“all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death :”

“the sum of 1,000 rupees in a certain chest :”

“the debt which B owes him :”

“all his bills, bonds and securities belonging to him, lying in his lodgings in Calcutta.”

“all his furniture in his house in Calcutta :”

“all his goods on board a certain ship then lying in the river Hughli.”

“2,000 rupees which he has in the hands of C :”

“the money due to him on the bond of D.”

“his mortgage on the Rampur factory :”

“one-half of the money owing to him on his mortgage of Rampur factory -”

“1,000 rupees, being part of a debt due to him from C :”

“his capital stock of 1,000*l*. in East India Stock :”

“his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan :”

“all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company.”

“all the wine which he may have in his cellar at the time of his death :”

“such of his horses as B may select.”

“all his shares in the Bank of Bengal :”

“all the shares in the Bank of Bengal which he may possess at the time of his death.”

“all the money which he has in the $5\frac{1}{2}$ per cent. loan of the Government of India :”

“all the Government securities he shall be entitled to at the time of his decease :”

Each of these legacies is specific.

(b) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors “Government promissory notes for 10,000 rupees in trust to sell” for the benefit of B. The legacy is specific.

(c) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(d) A bequeaths to B—

his house in Calcutta.

his zamindari of Rampur :

his taluq of Ramnagar .

his lease of the indigo-factory of Salkya :

an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(e) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(f) A bequeaths a sum of money—

to buy a house in Calcutta for B

to buy an estate in zila Faridpur for B :

to buy a diamond ring for B :

to buy a horse for B :

to be invested in shares in the Bank of Bengal for B :

to be invested in Government securities for B :

A bequeaths to B—

“a diamond ring :”

“a horse :”

“10,000 rupees worth of Government securities :”

“an annuity of 500 rupees :”

“2,000 rupees, to be paid in cash :”

“so much money as will produce 5,000 rupees 4 per cent. Government securities.”

These bequests are not specific.

(g) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the

property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England. No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Illustration.

A bequeaths to B—

“10,000 rupees of his funded property.”

“10,000 rupees of his property now invested in shares of the East Indian Railway Company.”

“10,000 rupees, at present secured by mortgage of Rampur factory.”

No one of these legacies is specific.

Bequest of stock where testator had at date of will, equal or greater amount of stock of same kind.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

Retention, in form, of specific bequest to several persons in succession.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations.

(a) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

OF DEMONSTRATIVE LEGACIES.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific ;

Where the legacy is directed to be paid out of specified property it is demonstrative.

Illustrations.

(a) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b) A bequeaths to B—

“ten bushels of the corn which shall grow in his field of Greenacre :”

“80 chests of the indigo which shall be made at his factory of Rampui :”

“1,000 rupees out of his five per cent. promissory notes of the Government of India :

an annuity of 500 rupees “from his funded property :”

“1,000 rupees out of the sum of 2,000 rupees due to him by C.”

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar.

A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar,” or charges it on his estate at Ramnagar :

“10,000 rupees, being his share of the capital embarked in a certain business ”

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees ; of these 1,500 rupees 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

OF ADEMPMENT OF LEGACIES.

139. If anything which has been sepecifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed ; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

Adeemption
explained

Illustrations.

(a) A bequeaths to B—

“the diamond ring presented to him by C :”

“his gold chain :”

“a certain bale of wool :”

“a certain piece of cloth .”

“all his household-goods which shall be in or about his dwelling house in M Street, in Calcutta, at the time of his death.”

A, in his lifetime,—

sells or gives away the ring :

converts the chain into a cup :

converts the wool into cloth .

makes the cloth into a garment :

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest :”

“all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable- The legacies are adeemed.

(c) A bequeaths to B certain bales of goods A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind ; but it shall in such case be paid out of the general assets of the testator

Non-ademp-
tion of demon-
strative legacy.

Adeemption of
specific bequest
of right to re-
ceive something
from third
party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a) A bequeaths to B—

“the debt which C owes him.”

“2,000 rupees which he has in the hands of D.”

“the money due to him on the bond of E.”

“his mortgage on the Rampur factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b) A bequeaths to B “his interest in certain policies of life assurance.” A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B “the debt due to him by C.” The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeath to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,600 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

“his capital stock of 1,000*l.* in East India Stock :”

“his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes. The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B “his 10,000 rupees in the 5½ per cent. loan of the Government of India.” A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B “all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B “all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” During A's absence upon a journey, the whole of the goods are

removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

When removal of thing bequeathed does not constitute ademption.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person, and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption ;

but, if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change take place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change by operation of law of subject of specific bequest between date of will and testator's death.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage-settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his 3 per cent. Consols." The Consols are without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance,

Non-liability of executor to exonerate specific legatees.

and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring. ^a

(b) A bequeaths to B a zamindari, which at A's death is subject to a mortgage for 10,000 rupees ; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a) A having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the

day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate ;

Exoneration of specific legatee's stock in Joint Stock Company.

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e) A is the owner of ten shares in a Railway Company. At a meeting held during his life time a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of
thing described
in general
terms.

Illustrations.

(a) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(b) A bequeaths to B “his pair of carriage-horses.” A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of
interest or pro-
duce of fund.

Illustrations.

(a) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created
by will pay-
able for life only
unless contrary
intention ap-
pears by will.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

161 Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(a) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator, C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

163 Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *prima facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *prima facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(a) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will, may in other character elect to take in opposition.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will; if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200l. during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000l. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000l.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which, upon his death, his son B, will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Presumption
arising from en-
joyment by le-
gatee for two
years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation
of bequest by
act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testa-
tor's representa-
tives may call
upon legatee to
elect.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

Effect of non-
compliance.

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postponement
of election in
case of disabi-
lity.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

• A gift is

When gift said to be made in contemplation of death.

said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When it fails.

Illustrations.

(a) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

a watch :

a bond granted by C to A

a bank-note :

a promissory note of the Government of India endorsed in blank :

a bill of exchange endorsed in blank :

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :

the debt secured by C's bond :

the bank-note :

the promissory note of the Government of India :

the bill of exchange :

the money secured by the mortgage-deeds.

(b) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are desposited, with the intention of giving him the control over the contents of the trunk, or over the desposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c) A being ill, and in expectation of death, puts aside certain articles in sparate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION. * * *

Character and property of executor or administrator as such

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of will proved abroad.

180. When a will has been proved and deposited in Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not ; B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, " but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :— I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

187. No right as executor or legatee can be established in any Court of justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the 180th section.

Effect of probate

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Effect of letters of administration.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship ;

Exception except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship. 194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the persons renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited. 195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased ;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered. a

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,

representative
of such legatee.

or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before
grant of admin-
istration to le-
gatee, other than
universal or res-
iduary

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned calling on the next of kin to accept or refuse letters of administration.

Order in which
connections are
entitled to ad-
minister.

200. When the deceased has died intestate, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration
to widow unless
Court see cause
to exclude her.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a) The widow is a lunatic, or has committed adultery, or has been bared by her marriage-settlement of all interest in her husband's estate. There is cause for excluding her from the administration.

(b) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

Association
with widow in
administration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

Administration
where no
widow, or widow
excluded.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate.

provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kin-
dered to adminis-
tration

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

Right of widow-
er to administra-
tion of wife's es-
tate.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANTS.

(a) *Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

(b) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the Province, letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

216. When there are two or more minor executors and no executor who was attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration for use and benefit of lunatic *ius habens*

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c) For Special Purposes.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited. ^{Probate limited to purpose specified in will.}

220. If an executor appointed generally give ^{Administration, with will annexed, limited to particular purpose.} authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf. ^{Administration limited to property in which person has beneficial interest.}

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution. ^{Administration limited to suit.}

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect. ^{Administration limited to purpose of becoming party to suit to be brought against administrator.}

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person whom such Court may think ^{Administration limited to collection and preservation.}

fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d) Grants with Exception.

Probate or administration with will annexed, subject to exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

228. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to
grants of effects
unadministered

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration
when limited
grant expired,
and still some
part of estate
unadministered

(g) *Alteration in Grants.*

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

What errors
may be rectified
by Court.

Procedure
where codicil
discovered after
grant of admin-
istration with
will annexed.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) *Revocation of Grants.*

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or
annulment for
just cause.

"Just cause."

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

5th,* that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.

* Added by Act VI of 1889, s. 2.

Illustrations.

- (a) The Court by which the grant was made had no jurisdiction.
- (b) The grant was made without citing parties who ought to have been cited.
- (c) The will of which probate was obtained was forged or revoked.
- (d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f) Since probate was granted, a later will has been discovered.
- (g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.
- (h) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

235. The district Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

235A.* The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in noncontentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

* Added by Act VI of 1881, s. 2.

District Judge
may order
person to pro-
duce testament-
ary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same,

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or if not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of
District
Judge's Court in
relation to pro-
bate and ad-
ministration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

239. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage ; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When and how
District Judge
to interfere for
protection of
property.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When probate
or administra-
tion may be
granted by Dis-
trict Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge

Disposal of ap-
plication made

to Judge of District in which deceased had no fixed abode. to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

241A.* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as herein-after mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immovable, of the deceased, throughout the Province in which the same is granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

*Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the Court, have like effect throughout the whole of British India

242A + Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar or such other officer as the High Court making the grant appoints in this behalf shall send to each of the other High Courts a certificate to the following effect —

I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of 187 the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D. late of deceased, to E. F. of and G. H. of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India :

* Added by Act VI of 1881, s. 3.

+ Added by Act XIII of 1875.

and such certificate shall be filed by the High Court receiving the same

Conclusiveness
of application
for probate or
administration,
if properly made
and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration ;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating

Petition for
probate.

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

* the amount of assets which are likely to come to the petitioner's hands, and

that the petitioner is the executor named in the will ;*

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge ;

† and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

In what cases
translation of
will to be an-
nexed to petition

Verification of
translation by
person other
than Court
translator.

“I (A. B) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

* See Act VI of 1889, s. 3.

† Added by Act VI of 1881, s. 4.

Petition for
letters of ad-
ministration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating,

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge or District Delegate * to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands ;

* and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.

246A.† Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

and the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.

Petition for
probate or ad-
ministration to
be signed and
verified.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

“I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

Verification of
petition for pro-
bate, by one
witness to will †

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

* See Act VI of 1881.

† Added by Act XIII of 1875, s. 4.

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or mark*) thereto (*as the case may be*) (*or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence*)."

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

* 250. In all cases it shall be lawful for the District Judge or District Delegate, * if he shall think proper,

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

Caveats against grant of probate or administration.

251.* Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

* See Act VI of 1881.

Form of caveat. 252. The caveat shall be to the following effect:—

“Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____.”

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or officer *to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

District Delegate when not to grant probate or administration.

253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation:—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.* In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

253C.* In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge ;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do ;

* See Act VI of 1881.

and in that case the same shall be sent by him to the District Judge.

254. When it shall appear to the Judge or District Delegate* that probate of a will should be granted he will grant the same under the seal of his Court in manner following :

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction,*) hereby make known that on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is herunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named,† he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

255. And wherever it shall appear to the District Judge or District Delegate* that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction,*)], hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the case may be) of the deceased,† he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the

* See Act VI of 1881.

† See Act VI of 1889.

same date or within such further time as the Court may from time to time appoint.

256.* Every person to whom any grant of letters of administration is committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in and administering the estate of the deceased; which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some person, his executors or administrators,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

259. Every District Judge or District Delegate† shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established;

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted, shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

* See Act VI of 1889.

† See Act VI of 1881.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

262. Where any probate or letters of administration are revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor, or administrator in existence, thereby makes himself an executor of his own wrong.

Executor of his own wrong.

Exceptions.—First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(a) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined, in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(a) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(a) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV. .

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

*277. (1) An executor or administrator shall within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

†277A. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator to the effects of any person dying in British India and leaving property in more than one Province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the Provinces ;

and the value of such property situate in the said Provinces, respectively, shall be separately stated in such inventory ;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

* See Act VI of 1889, s. 7.

† See Act XIII of 1875, s. 5, and Act VI of 1889, s. 8.

As to property
of, and debts
owing to deces-
ed.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for cer-
tain services to
be next paid, and
then other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased.

Save as afore-
said, all debts to
be paid equally
and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Application of
moveable prop-
erty to pay-
ment of debts,
where domicile
not in British
India.

283.* If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of British India.

Creditor paid
in part under
section 283 to
bring payment
into account be-
fore sharing in
proceeds of im-
moveable prop-
erty.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immovable property to the value of 10,000 rupees, debts on instruments under seal to the

* See Act VI of 1889, s. 9.

amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

A batement of general legacies.

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to

sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent. 296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after the event.

Commencement of annuity when no time fixed by will.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Dates of successive payments when first payment directed to be made within given time, or on day certain.

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit ;

and, until interest payable until investment.

such conversion and investment shall be completed the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his

payment or possession of bequest, and no direction to pay to person on his behalf.

behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom* or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge, or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy. 309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund. 210. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

* See Act VI of 1881.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy. 311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed. 312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest. 313. The rate of interest shall be four per cent. per annum.

No interest on arrears of annuity within first year after testator's death. 314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity. 315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the 124th section for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy has become due on performance of condition within further time allowed under section 124.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

321.* A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies: and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

* See Act XV of 1877.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

Limit to refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving 'nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

326A*. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section

* See Act II of 1890, s. 9.

320, and after having discharged, at the expiration of the time there in named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329.—[*Stamp and Fees*] Repealed by Act VII of 1870.

330.—[*Saving as to Administrator General.*] Repealed by Act XXIV of 1867.

Succession to property of Hindus, &c., and certain wills, intestacies and marriages not affected.

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist; nor shall they apply to any will made, or any intestacy occurring, before the first day of January, 1866.

The 4th section shall not apply to any marriage contracted before the same day.

332. The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt, from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act or of the part of the Act mentioned in the order.

Power of Governor General in Council to exempt any race, sect or tribe in British India from operation of Act.

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the Gazette of India.

*333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letters of administration.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

SCHEDULE.—[*Stamps and Fees.*] *Repealed by Act VII of 1870.*

* Added by Act VI of 1889, s. 10.

THE HINDU WILLS' ACT.

ACT NO. XXI of 1870.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th July 1870).

An Act to regulate the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Hindu Wills' Act, 1870."

Certain portions of Succession Act extended to wills of Hindus, Jainas, Sikhs and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive),

sections one hundred and seventy-nine to one hundred and eighty-nine (both inclusive),

sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

so much of Parts XXX and XXXI as relates to grants of probate and letters of administration with the will annexed, and

• Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding any thing contained in section three hundred and thirty-one of the said Act, apply—

(a) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits :

Provisos. 3. Provided that marriage shall not revoke any such will or codicil :

And that nothing herein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will :

And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos* .

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorise any Hindu, Jaina, Sikh or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

4. On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant Governor of Bengal.

Partial repeal of Bengal Regulation-V of 1799, section 2.
Saving of rights of Administrator General.

5. Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively.

6 In this Act and in the said sections* of the Indian Succession Act, all words defined in section three of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively :

Interpretation-
clause.

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three and one hundred and eighty-two of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child ; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son :

And in making grants under this Act, of letters of administration with the will annexed or with a copy of the will annexed, section one hundred and ninety-five of the said Succession Act shall be construed as if the words "and in case the Hindu Wills Act had not been passed" were added thereto, and section one hundred and ninety-eight of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindu Wills' Act had not been passed" were inserted ; and sections two hundred and thirty and two hundred and thirty-one of the said Succession Act shall be construed as if the words "if the Hindu Wills Act had not been passed" were added thereto, respectively.

* Repealed by Act XII of 1891.

THE PROBATE AND ADMINISTRATION ACT.

ACT NO. V of 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st January, 1881.)

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply, It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Act may be called the Probate and Administration Act, 1881 :
- Local extent. It applies to the whole of British India ;
- Commencement. and it shall come into force on the first day of April, 1881.
2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881 :
- Personal application.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day :

Provided also that, except in cases to which the Hindu Wills Act, 1870, applies,

no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma,

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-
clause. 3. In this Act, unless there be something repugnant in the subject or context,—

“Province” “Province” includes any division of British India having a Court of the last resort :

“minor,” “minor” means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years ; and “minority” means the status of any such person :

“will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

“codicil” means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :

“specific legacy” “specific legacy” means a legacy of specified property :

“demonstrative legacy” “demonstrative legacy” means a legacy directed to be paid out of specified property .

“probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided

“administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor : and

“District Judge” “District Judge” means the judge of a principal civil court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and
property of exe-
cutor or admini-
strator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration
with copy an-
nexed of authen-
ticated copy of
will proved ab-
road.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only
to appointed
executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment
express or im-
plied.

7. The appointment may be express or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix" C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words.—"I appoint my nephew my residuary legatee to discharge all lawfull demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to
whom probate
cannot be granted.

8. Probate cannot be granted to any person who is a minnor or is of unsound mind.

Grant of pro-
bate to several
executors simul-
taneously or at
different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10 If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

17. The repudiation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

From and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

21. When there is no executor and no residuary legatee or

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and

letters of administration may be granted to him or them accordingly.

22. Letters of administration with the will annexed shall not

Citation before grant of administration to legatee other than universal or residuary.

be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. When the deceased has died intestate, administration of

To whom administration may be granted.

his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—*Grants for the Use and Benefit of Others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of

sent, would be entitled to administer.

Administration to attorney of absent person entitled to administer in case of intestacy.

administration with the will annexed may be granted to his agent, limited as above-mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint

circumstances would be entitled to administration.

some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—*Grants with Exception.*

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—*Grants of the Rest.*

Probate or administration of rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—*Grants of Effects unadministered.*

Grants of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

56. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

What errors may be rectified by Court

Procedure where codicil discovered after grant of administration with will annexed

Revocation or annulment for just cause

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(h) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

52. The Power to appoint Delegate of District Judge to deal with non-contentious cases.

The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.
 55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.
 56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.
 57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.
 58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.
 59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Punjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Effect of unlimited probates, &c., granted by certain Courts

Transmission to other Courts of certificate by Court granting unlimited probate, &c.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants a certificate to the following effect:—

“I, A. B., Registrar [or as the case may be] of the High Court of Judicature at

[or as the case may be], hereby certify that on the day of 188 the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C D, late of deceased, to E. F. of and G. H. of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India”;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the District at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 28, a copy, draft or statement of the contents thereof, annexed, and stating

the time of the testator's death, that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases
translation of
will to be annex-
ed to petition.

Verification of
translation by
person other
than Court trans-
lator

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

“ I (A. B) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

Petition for
letters of admini-
stration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

“I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

“I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, to examine the petitioner in person upon oath, and also

Additional statements in petition for probate, &c

Petition for probate or administration to be signed and verified.

Verification of petition for probate by one witness to will.

Punishment for false averment in petition or declaration.

District Judge may examine petitioner in person,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration. 70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate ;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat. 71. The caveat shall be to the following effect :—

“Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____.”

After entry of caveat, no proceeding taken on petition until after notice to caveator. 72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration. 73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in *(here insert the limits of the Delegate's jurisdiction)*] hereby make known that on the _____ day of _____ in the year _____ the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to _____, the executor in the said will named he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court as true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The _____ day of _____, 18 ____.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed should be granted, he shall grant the same under the seal of his Court in manner following :—

“ I, _____, Judge of the District of _____, [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of _____ 18 .”

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall* be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of _____

Time before
which probate or

Grant of letters
of administration
to be under
seal of Court.

Form of such
grant.

Administration-
bond.

Assignment of
administration-
bond.

administration shall not be granted. fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him.

Filing of original wills of which probate or administration with will annexed granted.

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, &c., until same revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same,

Payment to executor or administrator before probate or administration revoked.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing to grant any application for letters of administration made under this Act.

Power to refuse letters of administration.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Appeals from
orders of Dis-
trict Judge.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jur-
isdiction of High
Court

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

In respect of
causes of action
surviving de-
ceased, and debts
due at death.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and
rights of suit of
or against de-
ceased survive to
and against exe-
cutor or admin-
istrator.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

Power of exe-
cutor or admin-
istrator to dis-
pose of property.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

Purchase by executor or administrator of deceased's property.

91 If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

Powers of administrator of effects unadministered

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98.* (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

Inventory and account.

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

* This section was substituted for the original s 98 by Act VI of 1889, s. 15.

99. In all cases where a grant has been made* of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India ;

and the value of such property situate in each Province shall be separately stated in such inventory ;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient

* These words in s. 99 were substituted for the original words by Act VI of 1889, s. 16.

legacies without indemnity.

indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

Non-abatement of specific legacy when assets sufficient to pay debts.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII. .

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a) A bequeaths to B his land of Sultanpure, which at the date of the will and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity, when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to
residuary lega-
tee of contin-
gent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of
residue bequea-
thed for life,
with direction
to invest in spe-
cified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit ;

Time and man-
ner of conver-
sion and invest-
ment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest pay-
able until in-
vestment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

Procedure where
minor entitled to
immediate pay-
ment or posses-
sion of bequest,
and no direction
to pay to person
on his behalf.

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied

for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when
no time fixed for
payment of gen-
eral legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exception.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when
time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on
arrears of annu-
ity within first
year after testa-
tor's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum
to be invested to
produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of leg-
acy paid under
Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if
paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full

When legatee, not satisfied or compelled to refund under section 140, cannot

oblige one paid in full to refund.

to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

145A* Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are

* S. 145A was inserted by Act II of 1890, s. 16.

entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation ;

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII, IX, X, and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause,

149. Nothing herein contained shall—

- (a) Validate any testamentary disposition which would otherwise have been invalid ;
- (b) Invalidate any such disposition which would otherwise have been valid ;
- (c) Deprive any person of any right of maintenance to which he would otherwise have been entitled : or
- (d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. [*Repeal of portions of Act XXVII of 1860.*] *Repealed by Act VII of 1889.*

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Amendment of Court-fees Act*] *Repealed by Act VII of 1889.*

Amendment of Hindu Wills Act, 1870

154. The following amendments shall be made in the Hindu Wills Act, 1870 (namely) :—

- (a) for the portion of section 2 commencing with the words “sections one hundred and seventy-nine” and ending with the words “administrator with the will annexed,” the words “and section one hundred and eighty-seven” shall be substituted ;

(b) the third clause of section 3 and the last clause of section 6 shall be repealed ;

(c) in section 6, for the words " one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force, have been made in Lower Burma, shall whenever such grant would have been lawful if this Act had been in force be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures " 321," the following shall be inserted, namely,— " or under the Probate and Administration Act, 1881 section 139 or 140."

157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

THE INDIAN EVIDENCE ACT, 1872.

ACT NO. I OF 1872.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor General on the 15th
March 1872.*

Preamble. WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows.—

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

Short title 1. This Act may be called the “The Indian Evidence Act, 1872.”

Extent. It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator;

Commencement of Act. and it shall come into force on the first day of September 1872.

Repeal of Enactments. 2. On and from that day the following laws shall be repealed:—

(1) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India:

(2) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for ; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

3. In this Act the following words and expressions are used
 Interpretation- in the following senses, unless a contrary intention
 clause. appears from the context :—

"Court" "Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

"Fact." "Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in certain order in a certain place, is a fact

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to

"Relevant" in the provisions of this Act relating to the relevancy of facts.

The expression "Facts in issue" means and includes :—any fact
 "Facts in issue" from which, either by itself or in connection with other facts the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding necessarily follows :—

Explanation.—Whenever under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature

“Document” means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may

“Document.” be used, *for the purpose of recording that matter.*

Illustrations.

A writing is a document :

Words printed, lithographed or photographed are documents :

A map, or plan is a document :

An inscription on a metal plate or stone is a document ;

A caricature is a document.

Evidence “ “Evidence means and includes —

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court ; such documents are called documentary evidence ,

A fact is said to be proved when, after considering the matters “ Proved ” before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters “ Disproved.” before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved.” A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, “ May presume.” unless and until it is disproved or may call for proof of it.

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless "Shall presume." and until it is disproved.

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, "Conclusive proof" regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue.

A's beating B with the club ;
A's causing B's death by such beating ;
A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue, as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops

are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which,
are occasion, cause
or effect of
facts in issue.

Illustrations.

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, pre-
paration and
previous or sub-
sequent con-
duct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party or of any agent to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation—1. The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2—When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The fact that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(g) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend money, and that D said to C in A's presence and hearing—'I advise you not to trust A for he owes B 10,000 rupees,' and that A went away without making any answer are relevant facts.

(h) The question is whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant.

as a dying declaration under section thirty-two, clause (one) or as corroborative evidence under section one hundred and fifty-seven.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed, without making complaint is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one) or as corroborative evidence under section one hundred and fifty-seven.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Illustrations.

(a) The question, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true?

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Things said or done by conspirator in reference to common design.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and

the contents of a letter written by H giving an account of the conspiracy, are each relevant both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant, become relevant

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact ;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable

Illustrations.

(a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12 In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence ;

(b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feelings—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

- (a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

- (b) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

- (c) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

- (d) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

- (e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

- (f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B, may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters

(k) The question whether A has been guilty of cruelty towards B his wife

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(m) The question is what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages

which he let to hire, is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstance of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission—by party to proceeding or his agent;

by sutor in representative character;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty-two

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged, A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged, but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement, in the date of the letter is admissible because, if A were dead, it would be admissible under section thirty-two, clause (two).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases, when relevant

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section one hundred and twenty-six.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

Confession to Police officer not to be proved.

25. No confession made to a Police officer, shall be proved as against a person accused of any offence.

Confession by accused while in custody of Police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

How much of information received from

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it

accused may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant

amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(a) A and B are jointly tried for the murder of C. It is proved that A said,—‘B and I murdered C.’ The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—‘A and I murdered C.’

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant

- (1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question,

When it relates to cause of death,
Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

- (2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

- (3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

- (4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

- (5) When the statement relates to the existence of any relationship by blood, marriage or adoption* between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

- (6) When the statement relates to the existence of any relationship by blood, marriage or adoption* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

- (7) When the statement is contained in any deed, will or other document which relates to any such

* See Act XVIII of 1872.

saction mentioned in section 13, clause (a),

or is made by several persons, and expresses feelings relevant to matter in question.

transaction as is mentioned in section thirteen, clause (a).

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account, regularly kept in the course of

Entries in books of account when relevant business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series

part of a conversation, document, book, or series of letters or papers

of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE, WHEN RELEVANT.

40. The existence of any judgment, order or decree which law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, &c, jurisdiction.

Such judgment, order or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person,

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree* declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment order or decree* declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section forty-one, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit

*See Act XVIII of 1872.

by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders or decrees, other than those mentioned in sections forty, forty-one and forty-two, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

Judgments, &c., other than those mentioned in sections 40-42, when relevant.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true, in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery. Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section forty, forty-one or forty-two, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court may be proved.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, are relevant facts. Such persons are called experts.

Opinions of experts.

*See Act XVIII of 1872.

Illustrations.

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his au-

thority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon,

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

49. When the Court has to form an opinion as to—
the usages and tenets of any body of men or family,
the constitution and Government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,
the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact : Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven or four hundred and ninety-eight of the Indian Penal Code.

Opinion on relationship, when relevant.

Illustrations.

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed irrelevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

In criminal cases, previous good character relevant.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant, but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

Explanation—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections fifty-two, fifty-three, fifty-four, and fifty-five, the word ‘character’ includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.**ON PROOF.****CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.**

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice 57. The Court shall take judicial notice of the following facts :—

(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India :

(2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War for Her Majesty's Army or Navy :

(4) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto :

Explanation.—The word 'Parliament,' in clauses (two) and (four) includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland ;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland, and

5. The Parliament of Ireland .

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland .

(6.) All seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council . the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government :

(8) The existence, title, and national flag of every State or Sovereign recognized by the British Crown .

(9.) The divisions of time, the Geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(10) The territories under the dominion of the British Crown .

(11) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates,

attornies, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) The rule of the road, on land or at sea.*

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings : Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV,— OF ORAL EVIDENCE.

Proof of facts by oral evidence. 59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct. 60. Oral evidence must in all cases, whatever, be direct ; That is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ,

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

* See Act XVIII of 1872.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

Primary evidence.

61. The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document ;

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained ;

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;

(3) Copies made from or compared with the original ;

(4) Counterparts of documents as against the parties who did not execute them ;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence. 64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given. 65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

(a) When the original is shown or appears to be in the possession or power

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it ;

and when, after the notice mentioned in section sixty-six, such person does not produce it ;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(d) When the original is of such a nature as not to be easily moveable ;

(e) When the original is a public document within the meaning of section seventy-four ;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party
Rules as to notice to produce.

in whose possession or power the document is, or to his attorney or pleader* such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) When the document to be proved is itself a notice;
- (2) When from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) When the adverse party or his agent has the original in Court;
- (5) When the adverse party or his agent has admitted the loss of the document;

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof of execution of document required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found

Admission of execution by party to attested document

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

* See Act XVIII of 1872.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved, for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents.—

1. Documents forming the acts, or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. The public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other
official docu-
ments.

78. The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments, respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by the order of the Government :

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4) The acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5) The proceedings of a municipal body in British India, by a copy of such proceedings certified by the legal keeper thereof, or by printed book purporting to be published by the authority of such body :

(6) Public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

Presumption as
to genuineness
of certified co-
pies

The Court shall also presume that any officer by whom any such, document purports to be signed or certified held, when he signed it the official character which he claims in such paper.

80. Whenever any document is produced before any Court, pur-
Presumption as to documents produced as record of evidence porting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. The Court shall presume the genuineness of every document
Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82. When any document is produced before any Court, purpor-
Presumption as to document admissible in England without proof of seal or signature. ting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans
Presumption as to maps or plans made by authority of Government. purporting to be made by the authority of Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate

84. The Court shall presume genuineness of every
Presumption as to collections of book purporting to be printed or published under

laws and reports of decisions the authority of the Government of any country, and to contain any of the laws of that country.

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part such of document, which purports to be in the handwriting of and particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper,

(b) A produces deeds relating to landed property of which he is the mortgagor. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

* See Act XVIII of 1872.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want of failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5)—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of document is related to existing facts.

Illustrations.

(a) A policy of insurance is effected on goods “in ships from Calcutta to London” The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called ‘the Rampur tea estate’ is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B’s as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: ‘Bought of A a horse for Rs. 500.’ B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—‘Rooms, Rs. 200 a month.’ A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs 1,500.'

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, 'my estate at Rampur containing 100 bighas'. A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dhekkhan or Haidarabad in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any
 Burden of legal right or liability dependent on the existence of
 proof. facts which he asserts, must prove that those facts
 exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom bur- 102. The burden of proof in a suit or proceeding
 den of proof lies. lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that
 Burden of proof as to particular fact. person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the Act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that* when the question is "whether a man is alive or dead, and it is proved, that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted* on the

person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner, is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Proof of cession of territory.

*See Act XVIII of 1872.

114 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ,

(e) That judicial and official acts have been regularly performed ;

(f) That the common course of business has been followed in particular cases :

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

As to illustration (i)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable .

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (f)—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property ; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions, put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands.

Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to whom he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and Magistrates.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

126. No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal* purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

*See Act XVIII of 1872.

It is immaterial whether the attention of such barrister, pleader* attorney or vakil was or was not directed to such fact by or on behalf of his client

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to-
apply to inter-
preters &c

127. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, pleader* attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential
communications
with legal ad-
visers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

* See Act XVIII of 1872.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person, having possession, could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned

fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

Cross examination.

Re-examination.

Order of examination.
Direction of re-examination.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief. The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they must be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—‘B wrote a letter accusing me of theft, and I will be revenged on him.’ This statement is relevant, as showing A’s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Cross examination as to previous statements in writing.

* Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

- (1) to test his veracity;
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

Court to decide when question shall be asked and when witness compelled to answer.

(1) Such questions are proper if they are of such a nature that, the truth of the imputation conveyed by them would seriously affect, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any questions which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

The evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching
credit of wit-
ness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him —

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

* See Act XVIII of 1872.

(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances if proved, would corroborate the testimony of the witness as to the relevant fact which the testifies.

Questions tending to corroborate evidence of relevant fact admissible.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement relevant under section thirty-two or thirty-three, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by

What matters may be proved in connection

with proved statement relevant under section 32 or 33

whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

When witness may use copy of document to refresh memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence. and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Translation of documents.
Giving, as evidence of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document production of which was refused on notice

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant: and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under sections one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of jury
or assessors to
put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that of the rejected evidence had been received, it ought not to have varied the decision.

No new trial
for improper ad-
mission or rejec-
tion of evidence.

THE INDIAN EVIDENCE ACT.

SCHEDULE.

ENACTMENTS REPEALED.

[See Section 2.]

Number and year	TITLE.	Extent of repeal.
Stat 26 Geo. III, cap. 57.	For the Further regulation of the trial of persons accused of certain offences committed in the East Indies, for repealing so much of an Act made in the twenty-fourth year of the reign of his present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies, and for the more easy proof, in certain case, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99	To amend the Law of Evidence	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852.	To amend the Law of Evidence	So much as has not been heretofore repealed.
Act XIX of 1853	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855.	For the futher improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter	Section two hundred and thirty-seven.
Act I of 1868.	The General Clauses' Act, 1868	Sections seven and eight

ACT NO. VIII OF 1890.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the
21st March 1890.*

*An Act to consolidate and amend the law relating to
Guardian and Ward.*

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows.—

CHAPTER I.

PRELIMINARY.

Title, extent,
and commence-
ment.

I. (1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of British India, inclusive of Upper Burma and British Baluchistan, and

(3) It shall come into force on the first day of July 1890.

2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

Repeal

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders, and rules made under any of those enactments, shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed, and made under this Act; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor-General in Council or by a Governor

Saving of juris-
diction of Courts

of Wards and Chartered High Courts. or Lieutenant-Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*).

Definitions. 4. In this Act, unless there is something repugnant in the subject or context,—

(1) “minor” means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority :

(2) “guardian” means a person having the care of the person of a minor or of his property, or of both his person and property :

(3) “ward” means a minor for whose person or property or both, there is a guardian :

(4) “District Court” has the meaning assigned to that expression in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction :

(5) “the Court” means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian ; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward, for the time being ordinarily resides :

(6) “Collector” means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act :

(7) “European British subject” means an European British subject as defined in the Code of Criminal Procedure, 1882, and includes any Christian of European descent : and

(8) “prescribed” means prescribed by rules made by the High Court under this Act.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where, a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

Power of parents to appoint in case of European British subject.

- (a) by the father of the minor, or
- (b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Saving of power to appoint in other cases.
Power of the Court to make order as to guardianship.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

- (a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument, or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead, shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor, or
- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor ordinarily resides, or in which he has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

Court having jurisdiction to entertain application.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily

resides, or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint, and stating so far as can be ascertained,—

- (a) the name, sex, religion, date of birth, and ordinary residence of the minor ;
- (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband ;
- (c) the nature, situation, and approximate value of the property, if any, of the minor ;
- (d) the name and residence of the person having the custody or possession of the person or property of the minor .
- (e) what near relations the minor has, and where they reside ;
- (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment ;
- (g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result ;
- (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both ;
- (i) where the application is to appoint a guardian, the qualifications of the proposed guardian ;
- (j) where the application is to declare a person to be a guardian, the grounds on which that person claims ;
- (k) the causes which have led to the making of the application ; and
- (l) such other particulars, if any, as may be prescribed, or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post, or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1)

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

11. (1) If the Court is satisfied there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

Procedure on admission of application

(a) to be served in the manner directed in the Code of Civil Procedure on—

- (i) the parents of the minor if they are residing in British India,
- (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
- (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
- (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

Power to make interlocutory order for production of minor and interim protection of person and property.

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under the sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

- (a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or
- (b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of the
evidence before
making of order.

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself

Simultaneous
proceedings in
different Courts.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section (1) the Courts shall report the case through the Local Government to the Governor-General in Council, and the Governor-General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment
of declaration of
several guar-
dians.

(2) on the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject who during the incapacity of the father of her minor child has, by

will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared, and give effect to the order.

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian, and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor, or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both as the case may be.

19. Nothing in this chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

Guardian not to be appointed by the Court in certain cases.

- (a) of a minor who is a married female, and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,
- (b) subject to the provisions of this Act with respect to European British subjects of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or,
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III.

DUTIES, RIGHTS, AND LIABILITIES OF GUARDIANS.

General.

20. (1) A guardian stands in a fiduciary relation to his ward and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

Fiduciary relation of guardian to ward.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions, between them while the influence of the guardian still lasts or is recent.

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Capacity of minors to act as guardians.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

Remuneration of guardian.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor, shall in all matters connected with the guardianship of his ward, be subject to the control of the Local Govern-

Control of Collector as guardian.

ment, or of such authority as that Government, by notification in the official Gazette appoints in this behalf.

Guardian of the Person.

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health, and education, and such other matters as the law to which the ward is subject requires.

Duties of guardian of the person.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

Title of guardian to custody of ward.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

Removal of ward from jurisdiction

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter, he may do all acts which are reasonable and proper for the realisation, protection, or benefit of the property.

Duties of guardian of property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange, or otherwise, immoveable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian, and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

Powers of testamentary guardian.

Limitation of powers of guardian of property appointed or declared by the Court.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—
- (a) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immoveable property of his ward, or
 - (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Voidability of transfers made in contravention of section 28 or section 29.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Practice with respect to permitting transfers under section 29.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission: and it shall be recorded, dated, and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation, and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

- (a) that a sale shall not be completed without the sanction of the Court;
- (b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;
- (c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the

guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector the Court may, from time to time, by order, define, restrict, or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

Variation of powers of guardian of property appointed or declared by the Court.
Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice, or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition, and acting upon the opinion, advice, or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court.

34. Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, he shall,—

- (a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward.
- (b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or such other time as the

Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward ;

- (c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs ;
- (d) if so required by the Court, pay into the Court at such times as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs ; and
- (e) apply for the maintenance, education, and advancement of the ward and of such persons as are dependant on him, and for the celebration of ceremonies to which the ward or, any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and if the Court so directs, the whole or any part of that property.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition, and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representation of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

General liability of guardian as trustee.

Termination of guardianship.

Right of survivorship among joint guardians.

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Removal of guardian

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:—

- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court ;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court ;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be

- (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion

of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (7) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector, and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

41. (1) The powers of a guardian of the person cease—

- (a) by his death, removal, or discharge ;
- (b) by the Court of Wards assuming superintendence of the person of the ward ;
- (c) by the ward ceasing to be a minor ;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit ; or,
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so, or if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

- (a) by his death, removal, or discharge ;
- (b) by the Court of Wards assuming superintendence of the property of the ward ; or
- (c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward, or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other

Appointment of successor to guardian dead,

discharged, or instrument is removed or dies, the Court, of its own motion, or on application under Chapter II., may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

43. (1). The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff, and the guardian were the defendant, or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff, and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for removal of ward from jurisdiction.

45. (1) In the following cases, namely ;—

- (a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return

Penalty for contumacy.

- to the custody of his guardian in obedience to an order under section 25, sub-section (1), or
- (b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or
 - (c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the court, the Court may cause him to be arrested and recommitted to the civil jail.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act, and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure

47. An appeal shall lie to the High Court from an order made by a District Court,—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,
- (b) under section 9, sub-section (3), returning an application; or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,

Reports by
Collectors and
Subordinate
Courts.

Orders appeal-
able.

- (d) under section 26, refusing leave for the removal of a ward from the limits of jurisdiction of the Court, or imposing conditions with respect thereto ; or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section ; or,
- (f) under section 32, defining, restricting, or extending the powers of a guardian ; or,
- (g) under section 39, removing a guardian ; or,
- (h) under section 40, refusing to discharge a guardian ; or,
- (i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order ; or,
- (j) under section 44 or section 45, imposing a penalty.

48. Save as provided by the last foregoing section and by ^{Finality of} section 622 of the Code of Civil Procedure, an order ^{other orders} made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

49. The costs of any proceeding under this Act, including the ^{Costs.} costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50. (1) In addition to any other power to make rules conferred ^{Power of High Court to make rules.} expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act—

- (a) as to the matters respecting which, at the time at which reports should be called for from Collectors and subordinate Courts ;
- (b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted ;
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ;
- (d) as to the circumstances in which such requisitions as are mentioned in clause (a), (b), (c), and (d) of section 34 should be made ;
- (e) as to the preservation of statements and accounts delivered and exhibited by guardians ;
- (f) as to the inspection of those statements and accounts by persons interested ;
- (g) as to the custody of money, and securities for money, belonging to wards ;

- (h) as to the securities on which money belonging to wards may be invested ;
 - (i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,
 - (j) generally, for the guidance of the Courts in carrying out the purposes of this Act.
- (2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the Official Gazette.

51. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act, shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. In section 3 of the Indian Majority Act, 1875, for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely,—

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of wards before the minor has attained that age."

53. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely :—

A.—To section 44 of the said Code the following shall be added, namely :

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so."

B.—To section 443 of the said Code the following shall be added, namely :—

“Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.”

C.—After section 446 of the said Code the following shall be added namely —

“If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend the Court shall remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor.”

D.—For section 461 of the said Code the following shall be substituted, namely ;—

Receipt by next friend or guardian *ad litem* of property under decree for minor. “461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

“(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.”

E.—For section 464 of the said Code as amended by the Civil Procedure Code Amendment Act, 1888, the following shall be substituted, namely :—

Princes and Chiefs and wards of Court. “464. Nothing in this Chapter applies to a Sovereign Prince or ruling Chief suing or being sued, in the name of his State, on being sued, by direction of the Governor-General in Council or a Local Government, in the name of an agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

THE SCHEDULE

ENACTMENTS REPEALED.

(See section 2.)

Number and year	Title or subject.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XIV of 1858 .	Minors (Madras) .	The whole
XL. of 1858	Minors (Bengal) ...	So much as [has not been repealed
IX of 1861 ...	Minors .	The whole
XX. of 1864 ...	Minors (Bombay)	The whole.
XIV of 1869 ...	Bombay Civil Courts Act, 1869.	So much of the last paragraph of section 16 as has not been repealed.
VII. of 1870 .	Court-fees Act, 1870 ...	Section 19H, and article 10 of Schedule I
IV. of 1872 ...	Punjab Laws Act, 1872	So far as it relates to Act XL. of 1858.
XIX. of 1873 .	North-Western Provinces Land-revenue Act, 1873.	Section 258.
XIII. of 1874	European British Minors, Act, 1874	The whole.
XV of 1874 .	Laws Local Extent Act, 1874	So far as it relates to any enactment repealed by this Act
XX of 1875 ...	Central Provinces Laws Act, 1875	So far as it relates to Act XL. of 1858
XVIII. of 1876	Oudh Laws Act. 1876 ...	So far as it relates to Act XL. of 1858.

THE SCHEDULE¹—(continued.)

ENACTMENTS REPEALED—(continued.)

(See section 2)

Number and year	Title or subject.	Extent of repeal.
XIII. of 1879 ...	Oudh Civil Courts Act, 1869.	Clause (1) of section 25 relating to proceedings under Acts XL. of 1858 and IX. of 1861.
XIV. of 1882 ...	Code of Civil Procedure	The second paragraph of section 443.
XVIII. of 1884 ...	Panjab Courts Act, 1884	So much of section 29 as has not been repealed.
XVII. of 1885 ...	Central Provinces Government Wards Act, 1885.	Section 5.
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887	Clause (b) of section 23, of sub-section (2)
XI. of 1889 ...	Lower Burma Courts Act, 1889	The words "to be and" in section 99, sub-section (1), and section 102, so far as it relates to Act XIII. of 1874.
<i>Madras Regulations.</i>		
... of 1804 ...	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X. of 1831 .	Minors' Estates	Section 3.
<i>Regulations under the Statute 33 Victoria, Chapter 3.</i>		
IX. of 1874 .	Arakan Hill District Laws.	So far as it relates to Acts XL. of 1858 and IX of 1861.

ACT NO. IX OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd March 1875.)

An Act to amend the Law respecting the age of majority.

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Indian Majority Act, 1875."

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement and operation. and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely),—Marriage, Dower, Divorce, and Adoption;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid,* every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years and every minor of whose

Age of majority of persons domiciled in British India.

* See Act VIII of 1890, S. 52.

property the superintendence^f has been or shall be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India, shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section three, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

Age of majority how computed.

Illustrations.

(a) Z is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.

(b) Z is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

ACT NO. III OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 22nd March 1872)

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Preamble. Mahomedan, Parsi, Buddhist, Sikh or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows —

Local extent. 1 This Act extends to the whole of British India,*
Conditions upon 2 Marriages may be celebrated under this Act
which marriages between persons neither of whom professes the Chris-
under Act may tian or the Jewish, or the Hindu or the Mahomedan,
be celebrated or the Parsi or the Buddhist, or the Sikh or the Jaina
religion, upon the following conditions :—

(1)—Neither party must, at the time of the marriage have a husband or wife living

(2)—The man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar :

(3)—Each party must if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage .

(4)—The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to

* See Act XVI of 1874.

each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III of 1872,' and is hereinafter referred to as 'the Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar, before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Fourteen days after notice of an intended marriage has been given under section four, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two.

The nature of the objection made shall be recorded in writing by the Registrar, in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On respect of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection if there be a Court of competent jurisdiction open at the time, or if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed, or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I, [A,] take thee, [B,] to be my lawful wife (or husband).'

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon

13. When the marriage has been solemnized, the Registrar shall ^{Certificate of} enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III of 1872,' in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act

The Registrar may, if he thinks fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code, as the case may be, and the marriage so solemnized is void.

16. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisions to section two of this Act shall apply to them

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions, nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage: but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed

20 —*Repealed by Act XII of 1876.*

No marriage shall be registered under this section unless conditions (1), (3) and (4) of section two were complied with, and no such marriage shall be registered under this section if, during its continuance, either party has contracted a subsequent marriage.

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

FIRST SCHEDULE.

(See section 4.)

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III
of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say) —

Names.	Condi- tion	Rank or profession.	Age	Dwelling place.	Length of residence
<i>A B</i>	<i>Unmarried. Widower.</i>	<i>Landowner.</i>	<i>Of full age.</i>	<i>.....</i>	<i>23 days.</i>
<i>C D</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>.....</i>	<i>.....</i>

Witness my hand, this
187

day of

(Signed)

A. B.

1
SECOND SCHEDULE.
1

(See section 10.)

Declaration to be made by the Bridegroom :—

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion :
3. I have completed my age of eighteen years .
4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section two of Act III of 1872, render a marriage between us illegal :

[*And when the Bridegroom has not completed his age of twenty-one years :*

5. The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked :]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the bridegroom*].

Declaration to be made by the Bride :—

I, *C D*, hereby declare as follows .—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion :
3. I have completed my age of fourteen years .
4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section two of Act III of 1872, render a marriage between us illegal :

[*And when the bride has not completed her age of twenty one years, unless she is a widow :*

5. The consent of *M N*, my father [*or guardian, as the case may be*], has been given to a marriage between myself and *A B*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D* :

^

G H,
I J, } [*three witnesses*]
K L,

And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :

Signed in my presence and with my consent by the abovenamed *A B* and *C D*

M N, the father [or guardian]
of the above-named *A B* or *C D*,
as the case may be].

(Countersigned) *E F*,

*Registrar of Marriages under Act III of 1872 for
the District of*

Dated the day of 18 .

THIRD SCHEDULE.

(*See section 13*).

Registrar's Certificate.

I, *E F*, certify that, on the of 18
appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

*Registrar of Marriages under Act III of 1872 for the
District of*

(Signed) *A B,*
 C D,

G H,
I J, } [*three witnesses*].
K L,

Dated the day of 18

FOURTH SCHEDULE.

*(See section 20.)**Declaration to be made by the Husband :—*I, *A B*, hereby declare as follows.—1. I was married to *C D* at [*place*], on or about [*date*] in the presence of [*two witnesses*]2. I was, at the time of my marriage to my wife, *C D*, unmarried.

3. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.

4. I have not contracted any subsequent marriage?

5. I am not related to *C D* [*the wife*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisions of clause (4) of section two of Act III of 1872, render a marriage between us illegal :[*And when the bridegroom had not completed his age of twenty-one years.*]6. The consent of my father [*or guardian as the case may be*] had been given to a marriage between myself and *C D*, and had not been revoked.]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the husband*].*Declaration to be made by the wife :—*I, *C D*, hereby declare as follows—1. I was married to *A B* at [*place*], on or about [*date*] in the presence of [*two witnesses*]2. I was, at the time of my marriage to my husband, *A B*, unmarried :

3. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion :

4. I have not contracted any subsequent marriage :

5. I am not related to *A B* [*the husband*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisions of clause (4) of section two of Act III of 1872, render a marriage between us illegal.[*And when the bride had not at the time of her marriage, completed her age of twenty-one years, unless she was then a widow :*]

6. The consent of *M N*, my father [*or guardian, as the case may be*] had at such time been given to a marriage between myself and *A B*, and had not been revoked :]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the wife*].

Signed in our presence by the above-named *A B* and *C D* :

G H,
I J, } [*two witnesses*].

(Countersigned) *E F*,

Registrar of Marriages under Act III of 1872
for the District of

Dated the *day of*

18

THE MITACSHARA

ON INHERITANCE.

CHAPTER I.

SECTION I.

*Definition of Inheritance ; and of partition.—Disquisition
on property.*

1. EVIDENCE, human and divine, has been thus explained with (its various) distinctions ; the partition of heritage is now propounded by the image of holiness.

2. Here the term heritage (*daya*) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

3. It is of two sorts ; unobstructed (*a-pratibandha*), or liable to obstruction (*sa-pratibandha*.) The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons ; and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue : and thus the actual existence of a son and the survival of the owner are impediments to the succession ; and, on their ceasing, the property devolves (on the successor) in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other (descendants.)

4. Partition (*vibhaga*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Entertaining the same opinion NARADA says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage." "Paternal" here implies any relation, which is a cause of property. "By sons" indicates propinquity in general.

6 The points to be explained under this (head of inheritance,) are, at what time, how, and by whom, a partition is to be made, of what The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7 Does property arise from partition? or does partition of pre-existent property take place? Under this (head of discussion,) proprietary right is itself necessarily explained: (and that question is) Whether property be deduced from the sacred institutes alone, or from other (and temporal) proof.

8. (It is alleged, that) the inferring of property from the sacred code alone is right, on account of the text of GAUTAMA, "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a *Brahmana* an additional mode; conquest for a *Ushatryya*; gain for a *Vaisya* or *Sudra*." For, if property were deducible from other proof, this text would not be pertinent. So the precept, ('A *Brahmana*, who seeks to obtain any thing, even by sacrificing, or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief,') which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him," for it would belong to the taker. Or, (if it be objected that) the property of another was seized by this man, and it therefore does not become the property of the usurper; (the answer is,) then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. (It is asked) does not a consecrated fire effect the boiling of food; and so, of the rest? (The answer is) No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses: and so in the other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the *Lipsa sūtra* the venerable author has stated the adverse opinion after (obviating) an objection to it, that, "if restrictions, relative to the acquisition of goods, regard the religious ceremony, there could be no property, since proprietary right is not temporal;" (by showing, that) "the efficacy of acceptance and other modes of acquisition in constituting proprietary right, is matter of popular recognition." Does it not follow, "if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice?" (Answer) "It is a blunder of any one who affirms, that acquisition does not produce a proprietary right, since this is a contradiction in terms" Accordingly, the author, having again acknowledged property to be popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner, "Therefore a breach of the restriction affects the person, not the religious ceremony;" and the meaning of this passage is thus expounded, "If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, was as acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them, and consequently, according to the adverse opinion, the fault would not affect the man, if he deviated from the rule; but, according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule." It is consequently acknowledged, that even what is gained by infringing restrictions, is property; because, otherwise, there would be no completion of a religious ceremony.

11. It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognised by the world; and it disagrees with received practice.

12. Thus, since property, obtained by acceptance or any other (sufficient) means, is established to be temporal, the acceptance of alms, as well as other (prescribed) modes for a *Brahmana*, conquest and similar means for a *Cshatriya*, husbandry and the like for a *Vaisya*, and service and the rest for a *Sudra*, are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction. "Occupation" or seizure is the appropriation of water,

grass, wood and the like not ⁶ previously appertaining to any other (person as owner.) "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a *Brahmana*, that, which is obtained by acceptance or the like, is additional ;' not common (to all the tribes) "Additional" is understood in the subsequent sentence : 'for a *Cshattriya*, what is obtained by victory, or by amercement or the like, is peculiar. In the next sentence, "additional" is again understood : 'what is gained or earned by agriculture, keeping of cattle, (traffic.) and so forth, is for a *Vaisya* peculiar : and so is, for a *Sudra*, that which is earned in the form of wages, by obedience to the regenerate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of *Sutas*, and so forth,) is indicated by the word "earned" (*nirvishta*) for all such acquisitions assume the form of wages or hire ; and the noun (*nirvesa*) is exhibited in the *trikandi* as signifying wages.

14. As for the precept respecting the succession of the widow and daughters &c the declaration (of the order of succession,) even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might (but for that declaration) be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark, that, if property were temporal, it could not be said "my property has been taken away by him ;" that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text expresses "When *Brahmanas* have acquired wealth by a blameable act, they are cleared by the abandonment of it, with prayer and rigid austerity." Now, if property be deducible only from sacred ordinances, that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property and may be divided among heirs ; and the atonement abovementioned regards the acquirer only ; but sons have the right by inheritance, and therefore no blame attaches to them, since, MANU declares "There are seven virtuous means of acquiring property : viz. inheritance &c."

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

18. Of these [positions,] that of property arising from partition is

right; since a man, to whom a son is born, is enjoined to maintain a holy fire: for if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent: since no partition of it can be supposed, for it has been given by consent of all parties. But NARADA does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."

20. So the text concerning an affectionate gift, ("What has been given by an affectionate husband to his wife, she may consume as she pleases, when he his dead, or may give it away, excepting immoveable property;") would not be pertinent, if property were vested by birth alone. Nor it is right to connect the words "excepting immoveable property" with the terms "what has been given" [in the text last cited;] for that would be a forced construction by connexion of disjointed terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other moveable property;] but neither the father nor the grandfather, is so of the whole immoveable estate," and this other passage "By favour of the father, clothes and ornaments are used, but immoveable property may not be consumed, even with the father's indulgence;" which passages forbid a gift of immoveable property through favour: they both relate to immoveables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons, but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father, while the immoveable estate remains common.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

23. To this the answer is. It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of GAUTAMA

expresses "Let ownership of wealth be taken by both ; as the venerable teachers direct."

24. Moreover the text above cited "The father is master of the gems, pearls &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor it is right to affirm, that it relates to immoveables which have descended from the paternal grandfather since the text expresses "neither the father nor the grandfather. This maxim, that the grandfather's own acquisition should not be given away while the son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornament and other effects, though inherited from the grandfather belong to the father under the especial provisions of the law, so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. But the text of VISHNU (20), which mentions a gift of immoveables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest for, by the passages [above cited, as well as others not quoted, viz) "The father is master of the gems, pearls, &c." (§ 21), the fitness of any other but immoveables for an affectionate gift was certain.

26. As for the alleged disqualification for religious duties which are prescribed by the *Veda*, and which require for their accomplishment the use of wealth, (§ 18) sufficient power for such purpose is inferred from the cogency of the precept (which enjoins their performance.)

27. Therefore it is a settled point, that property in the paternal or ancestral estate by both, (although) the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty and for purposes prescribed by texts of law, as gift-through affection, support of the family, relief from distress, and so forth. but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor, since it is ordained, "Though immoveables or bipeds have been acquired by a man himself a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made."

28. An exception to it follows "Even a single individual may conclude a donation, mortgage, or sale, of immoveable property, during a season of distress, for the sake of the family, and especially for pious purposes."

29. The meaning of that text is this : while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated, even one person, who is capable, may conclude a gift, hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obseques of the father or the like, make it unavoidable

30. The following passage "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage," must be thus interpreted. 'among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common:' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separated or united: it is not required, on account of any want of sufficient power, in the single owner; and the transaction is consequently valid even without the consent of separated kinsmen.

31. In the text, which expresses, that "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water," consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public" but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water. [Since the sale of immoveables is forbidden ("In regard to the immoveable estate, sale is not allowed, it may be mortgaged by consent of parties interested;") and since donations is praised ('Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss;') if a sale must be made, it should be conducted for the transfer of immoveable property, in the form of a gift delivering with it gold and water [to ratify the donation.]

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text, (Section 5 § 3.)

SECTION II

Partition equable or unequal.—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence

1. At what time, by whom, and how, partition may be made will be next considered. Explaining these points, the author says,

"When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers."

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more sons.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by MANU. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for youngest, a quarter of it."

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." That is, all, namely the eldest and the rest, should be made partakers of equal portions.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper; for equal ownership will be declared.

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by NARADA, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead;") and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished." Here the words "let sons regularly divide the wealth are understood. GAUTAMA likewise, having said "After the demise of the father, let sons share his estate;" states a second period, "Or when the mother is past child-bearing;" and a third "While the father lives, if he desire separation." So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That SANKHA declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect or diseased."

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make the allotments

equal, his wives to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions."

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. But if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her. Or if any had been given, let him assign the half.

10. But if he give the superior allotment to the eldest son, and distribute similar unequal shares to rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by APASTAMBA; "The furniture in the house and her ornaments are the wife's [property]"

11. To the alternative before stated (§ 1) the author propounds an exception; "The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him some trifle."

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. The distribution of greater and less shares has been shown (§ 1). To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by MANU and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, NARAD declares "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."

SECTION III.

Partition after Father's decease.

1. The author next propounds another period of partition, other persons as making it, and rule respecting the mode. "Let sons

divide equally both the effects and the debts after (the demise of their two parents."

2. After their two parents.] After the demise of the father and mother; here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equally.] A rule respecting the mode is by this declared; in equal shares only should they divide the effects and debts.

3. But MANU, having premised "partition after the death of the father and mother," and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father; has exhibited a distribution with deductions: among brethren separating after the death of their father and mother, "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that, for the youngest, a quarter of it." The twentieth part of the whole amount of the property (to be divided,) and the best of all the chattels, must be given (by way of deduction) to the eldest; half of that, or a fortieth part, and a middling chattel should be allotted to the middlemost, and a quarter of it, or the eightieth part with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born and one a piece to the younger brothers; "If a deduction be thus made, let equal shares of the residue be allotted; but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled." The author himself (1) has sanctioned an unequal distribution when a division is made during the father's life time ("Let him either dismiss the eldest with the best share &c.") (2) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only in equal shares?

4 The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, (for) (3) it secures not celestial bliss." (4) as the practice (of offering bulls) is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat; and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Say a barren cow as a victim consecrated to MITRA and VARUNA.."

5. It is expressly declared, "As the duty of an appointment (to raise up seed to another,) and as the slaying of a cow for a victim, are disused, so is partition with deductions (in favour of elder brothers)."

6. APASTAMBA also, having delivered his own opinion, "A father, making a partition in his lifetime, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deduction ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son, the car appertains to the father; and the furniture in the house and her ornaments are the wife's; as also the property [received by her] from kinsmen; so some maintain") has expressly forbidden it as contrary to the law; and has himself explained its inconsistency with the sacred codes. "It is recorded in scripture, without distinction, that MANU distributed his heritage among his sons.

7. Therefore unequal partition, though noticed in codes of law, should not be practiced, since it is disapproved by the world and is contrary to scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard in the mother's separate property; "The daughters share the residue of their mother's property, after payment of her debts."

9. Let the daughters divide their mother's effects remaining over and above the debts, that is the residue after the discharge of the debts contracted by the mother. Hence the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this. A debt incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts. and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fetus;" the woman's property goes to her daughters because portions of her abound in her female children, and the fathers' estate goes to his sons, because portions of him abound in his male children.

11. On the subject [of daughter] a special rule is propounded by GAUTAMA. "A woman's property goes to her daughters, unmarried, or unprovided." His meaning is this. if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed. and this term signifies 'destitute of wealth.'

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds "And the issue succeeds in then default."

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text, ("Let sons divide equally both the effects and the debts ;") is here expressly declared for the sake of greater perspicuity.

SECTION IV.

Effects not liable to Partition.

1. The author explains what may not be divided "Whatever else is acquired by the coparcener himself, without detriment to their father's estate, as a present from or a gift at nuptials does not appertain to the coheirs. Nor shall he, who recovers hereditary property which had been taken away, give it up to the parceners. nor what has been gained by science."

2. That, which has been acquired by the coparcener himself without any detriment to the goods of his father or mother ; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the coheirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other coheirs : the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So SANKHA ordains "Land. [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. In regular succession.] Here the word "inherited" must be understood.

5. He need not give up to the coheirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning. the acquirer shall retain such gains.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate," must be everywhere understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate ; what is received in marriage, without waste of the patrimony ; what is redeemed, of the hereditary estate, without expenditure of ancestral property ; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend as the return of an obligation conferred at the charge of the patrimony : what is received at

a marriage concluded in the form termed *Asura* or the like ; what is recovered, of the hereditary estate, by the expenditure of the father's goods ; what is earned by science acquired at the expense of ancestral wealth ; all that must be shared with the whole of the brethren and with the father.

7. Thus since the phrase "without detriment to the father's estate" is in every place understood ; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of NARADA "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science." Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by CATYAYANA "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, anything obtained by mere acceptance would be exempt from partition, contrary to established practice.

10. This [condition, that the acquisition be without detriment to the patrimony,] is made evident by MANU "What a brother has acquired by his labour without using the patrimony, he need not give up to the coheirs ; nor what has been gained by science."

11. By labour [by science, war, or the like

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition since there was no ground for supposing a partition of them ? That what is acquired, belongs to the acquirer, and to no other person, is well known : but a denial implies the possible supposition of the contrary.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers ; provided they have duly cultivated science ;" in this manner, if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder ;" grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living : that is accordingly denied.

14 The argument is erroneous : since there is not here a denial of what might be supposed, but the text is a recital of that which was demonstratively true. for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. On you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethern shall be equal sharers of that which is acquired by them in concert" and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from the texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

16. Other things exempt from partition, have been enumerated by MANU. Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution."

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him ; and what had been worn by the father, must be given by brethern parting after the father's decease, to the person who partakes of food at his obseques : as directed by VRIHASPATI : "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

18. Vehicles] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal they belong to the eldest brother : as ordained by MANU ; "Let them never divide a single goat or sheep or a single beast with uncloven hoofs ; a single goat or sheep belongs to the first-born." 6

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe." It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn, may be divided.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.:

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares] must not be distributed by means of the value, but is to be used, [by the co-heirs] by turns.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour, [for the co-heirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number : for the text of GAUTAMA forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs]."

23. The term *yogakshema* is a conjunctive compound resolvable into *yoga* and *kshema*. By the word *yoga* is signified a cause of obtaining something not already obtained. that is a sacrificial act to be performed with fire, consecrated according to the *Veda* and the law. By the term *kshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained : such is the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible, as LAUGAKSHI declares. "The learned have named a conservatory act *kshema*, and a sacrificial one *yoga*; both are pronounced indivisible : and so are the bed and the chair."

24. Some hold, that by the compound term *yogakshema*, those who effect sacrificial and conservatory acts (*yoga* and *kshema*), are intended, as the king's counsellors, the stipendiary priest, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things, are meant.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by USANAS, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a *Brahman* by women of the military and other inferior tribes for it is ordained [by VRIHASPATI:] "Land, obtained by acceptance of donation, must not be given to the son of a *Kshatriya* or other wife of inferior tribe even though his father give it to him, the son of the *Brahman* may resume it, when his father is dead."

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition. The supposition, that anything, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.† •

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a

case, have a double share, by the text of VASISHT'HA. "He, among them, who has made an acquisition, may take a double portion of it."

30. The author propounds an exception to that maxim "But, if the common stock be improved, an equal division is ordained."

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

SECTION V.

Equal rights of Father and son in property ancestral.

1. The distribution of the paternal estate among sons has been shown, the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers."

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons: still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this; if unseparated brothers die leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed. the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions; to obviate this doubt the author says, "For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels [which belonged to him.]"

4 Land] a rice field or other ground. A corrody] So many leaves receivable from a plantation of betel pepper, or so many nuts from an orchard of aieca. Chattels] gold, silver, or other moveables.

5. In such property, which was acquired by the paternal grand-

father, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service,] the ownership of father and son is notorious: and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. The first text "when the father makes a partition, &c." (Sect. 2 § 1) relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself." The dependence of sons, as affirmed in the following passage. "While both parents live, the control remains, even though they have arrived at old age," must relate to effects acquired by the father or mother. The other passage, "They have not power over it (the paternal estate) while their parents live;" must also be referred to the same subject.

8. Thus, while the mother is capable of bearing more sons and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. Consequently the difference is this: although he have a right by birth in his father's and in his grandfather's property, still, since, he is dependant on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.]

11. MENU likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfathers; declaring, as he does ("If the father recover paternal wealth, not recovered by his co-heirs, he shall not, unless willing, share it with his sons; for in fact it was acquired by him.")† that if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions

CHAPTER II.

SECTION I.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. THAT sons principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes] on failure of them, is next declared.

2. "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student. on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. "This rule extends to all [persons and] classes."

3. He, who has no sons of any among the twelve descriptions above stated (C. I. Sect. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir or successor, is that person, among such as have been here enumerated, (*viz.*, the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Mur-dhavashrta* and others in the direct series of the classes or *Suta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

5. In the first place, the wife shares the estate. "Wife" (*patni*) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connection with religious rites.

6. *Vṛiddha* MĀNU also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances shall present his funeral oblation and obtain [his] entire share." *Vṛihad*-VISHNU likewise ordains it. "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters if there be none, it belongs to the father; if he be dead, it appertains to the mother." So does CATYAYANA. "Let the widow succeed to her husband's wealth, provided she be chaste; and in default of her, the daughter inherits if unmarried." And again, in another place; "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons are pronounced to be the heirs of one who leaves no male issue." Also *VRIHASPATI*: "Let the wife of a deceased man who left no male issue,

take his share notwithstanding kinsmen, a father, a mother, or uterine brethren, be present."

7. Passages, adverse to the widow's claim likewise occur. Thus NARADA has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance." MANU propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers." He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate: and, the mother also being dead, the father's mother shall take the heritage." SANKHA also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife." CATYAYANA too says, "If a man die separate from his coheirs, let his father take the property on failure of male issue, or successively the brother, or the mother, or the father's mother."

8. The application of these and other contradictory passages is thus explained by DHARASWARA. The rule, deduced from the texts [of YAJNYAWALKYA, &c], that the wife shall take the estate, regards the widow of a separated brother and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;" and other similar passages [as NARADA's. &c.] For there a rule of adjustment and a reason for it must be sought: but there is none other. Besides it is confirmed by a passage of GAUTAMA: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue. or his widow takes the estate, provided she seek progeny.'

10. MANU likewise shows by the following passage, that when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner "He, who keeps the estate of his brother and maintains the widow, must, if

he raise up issue to his brother, deliver the estate to the son." So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally : thus is the law settled."

11. 'VASISHT'HA also, forbidding an appointment to raise up issue, to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness ." thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

12. 'But, if authority for that purpose have not been received, the widow is entitled to a maintenance only ; by the text of NARADA : "Let them allow a maintenance to his women for life."

13 'The same (it is pretended) will be subsequently declared by the contemplative saint : "And their childless wives, conducting themselves aright, must be supported ; but such, as are unchaste, should be expelled ; and so, indeed, should those, who are perverse."

14 'Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit ; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties ; and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. That is wrong : for authority to raise up issue to the husband is neither specified in the text, (The wife and the daughters also, &c ") nor is it suggested by the premises. Besides, it may be here asked ; is the appointment to raise up issue a reason for the widow's succession to the property ? or is the issue, borne by her, the cause of her succession ? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son, and the right of the son subsequently produced [by means of the appointment] does not ensue. But, if the offspring be the sole cause [of her claim, the wife should not be recited as a successor : since, in that case, the son alone has a right to the goods.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong : for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."

17. Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared; and therefore the wife ought not to be mentioned under the head [of succession to the estate] of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of GAUTAMA "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man and she may either [remain chaste, or may] seek offspring." This too is erroneous for the sense, which is there expressed, is not 'If she seek to obtain offspring, she may take the goods of one who left no issue,' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes his estate and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle (*va*), 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared. 'The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share.' And an authority to raise up issue is expressly condemned by MANU. "By regenerate men no widow must be authorized to conceive by any other, for they, who authorize her to conceive by another, violate the primæval law."

19. But the text of VASISHTHA "An appointment shall not be through covetousness" must be interpreted 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession, and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.'

20. As for the text of PARADHA, "Let them allow a maintenance to his women for life," Since reunion of parceners had been premised (in a former text, viz., "The shares of reunited brethren are considered to be exclusively theirs," it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue &c.") For women's separate property is exempted from partition by this explanation of what had been before said: and a mere maintenance for the widow is at the same time ordained.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;" will be subsequently shown to intend the wife of an impotent man and so forth

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations burnt offerings and the rest are acts of religious duty, still other purposes of opulence and gratification, which are to be effected by means of wealth must remain unaccomplished, and if that be the case, there is an inconsistency in the following passages of YAJNYAWALKYA, GAUTAMA and MANU. "Neglect not religious duty, wealth or pleasure in their proper season" "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure." "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ill incident to sensual pleasure.]"

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the *veda*] "Let gold be preserved," is intended not for religious ends, but for human purposes.

24. Moreover, if the word sacrifice import religious duty in general, the succession of woman to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c.]

25. The text of NARADA, which declares the dependence of women, ("A woman has no right to independence,") is not incompatible with their acceptance of property; even admitting their thralldom.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c.") to be understood! The answer is, wealth, which was obtained [in charity] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow."

27. It is said by CATYAYANA "Henless property goes to the king, deducting however a subsistence for the females as well as the funeral charges. but the goods belonging to a venerable priest, let him bestow on venerable priests." "Henless property." or wealth

which is without an heir to succeed to it, 'goes to the king,' or becomes the property of the sovereign: "deducting however a subsistence for the females as well as the funeral charges," that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28 This relates to women kept in concubinage for the term employed is "females" (*yoshid*). The text of NARADA likewise relates to concubines; since the word there used is "women" (*stri*). "Except the wealth of a *Brahmana* [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."

29. But since the term "wife" (*Patni*) is here employed. (§ 2) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his coheirs and not reunited with them, dies leaving no male issue, his widow [if chaste] takes the estate in the first instance. For partition had been precluded; and reunion will be subsequently considered.

31 It must be understood, that the explanation, proposed by SRICARA and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.] If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If a man the allotments equal, his wives must be rendered partakes of like portions." And again: "Of heirs dividing after the death of the father, let the mother also take an equal share." So that in the case of a large estate error to say, that the wife takes nothing, is a manifest error, and the wealth of her husband, who dies leaving no male issue.

32 But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakes of like portions" and "let the mother also take an equal share") the wife takes wealth sufficient only for her subsistence. — It is answered, that the words "share" or "portion," and "equal" or "like," must consequently be deemed unmeaning.

33. Or suppose, that if the wealth be great, she takes precisely enough for her subsistence, but if small, she receives a share equal

to that of a son. This again is wrong for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34. Thus, in the instance of the *Chaturmasya* sacrifices, in the disquisition [of the *Mimansa*] on the passage *dwayoh prawayanti*; where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the *Soma-yaga* extend to these sacrifices; in consequence of which the injunction not to construct a northeren altar (*uttara-vedi*) at the *Vanswedeva* and *Sunāsiriya* sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices as at a *Soma-yaga* .] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Soma-yaga*, but an exception to the express rule "prepare an *uttara-vedi* at this sacrifice [*viz.*, at the *Chaturmasya* ;]" it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the *uttara-vedi* at this sacrifice," commands its construction at the two middle periods namely the *Varuna-praghasa* and *Sacamed'ha* with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of MANU ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,") as well as from that of ŚAṆKHA ("The wealth of a man, who departs from heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife," the succession of brothers, to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support under the text "Let them allow a maintenance to his women for life:" this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;"), is propounded, on the controverted question

whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate : for he interprets the text, "Of him who leaves no son, the father shall take the inheritance, or the brothers;" as not relating to the order of succession, since it declares an alternative ; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of SANKHA too relates to a reunited brother.

36. Besides it does not appear either from this passage [of YAJNYAWALKYA] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence "On the failure of the first among these, the next in order is heir;" be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relates to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33) affects this interpretation.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life." This passage of HARITA is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of HARITA], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. With the same view, SANKHA has said "Or his eldest wife." (§ 7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth, and like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue.

SECTION II.

Right of the daughters and daughter's sons.

1 On failure of her, the daughters inherit. They are named in the plural number (Section 1. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2. Thus CATYAYANA says, "Let the widow succeed to her husband's wealth, provided she be chaste; and in default of her, let the daughter inherit, if unmarried." Also VAITHASPATI : "The wife is pronounced successor to the wealth of her husband, and, in

her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3. If there be competition² between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. If the competition be between an unprovided and enriched daughter, the unprovided one inherits, but, on failure of such, the enriched one succeeds: for the text of GAUTAMA is equally applicable to the paternal, as to the maternal, estate. "A woman's separate property goes to her daughters, unmarried or unprovided"

5. It must not be supposed, that this relates to the appointed daughter: for in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter," or the daughter appointed to be a son)

6. By the import of the particle "also" (Sect. 1. § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus VISHNU says, "If a man leave neither son, nor son's son nor [wife, nor female] issue, the daughter's sons shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons." MANU likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son let that son give the funeral oblation and possess the inheritance."

SECTION III.

Right of the parents.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenour of the text; Sect. 1 § 2] since a conjunctive compound is declared to present the meaning of its several terms at once; and the omission of one term and retention of the other constitute an exception to that complex expression;] yet as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (*matapitarau*) 'mother and father' when not reduced [to the simpler form *pitarau* 'parents'] by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus

presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and on failure of heir, the father.

3. Besides the father is a common parent to other sons, but the mother is not so and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance conformably with the text "To the nearest *sapinda*, the inheritance next belongs."

4. Nor is the claim in virtue of propinquity restricted to (*sapindas*) kinsmen allied by funeral oblations (A). but, on the contrary, it appears from this very text, (§ 3) that the rule of propinquity is effectual, without any exception, in the case of (*samanodacas*) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession

5. Therefore since the mother is the nearest of the two parents it is most fit, that she should take the estate. But on failure of her, the father is successor to the property.

SECTION IV.

Right of the brothers.

1. On failure of the father, brethren share the estate. Accordingly MANU says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."

2 It has been argued by DHARESWARA, that, under the following text of MANU, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;" "even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession; because wealth, devolving upon him, may go to sons dissimilar by class, but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe, and therefore the paternal grandmother takes the estate."

3. The holy teacher (VISHWAKṢI) does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited. "The sons of a *Brahmana*, in the several tribes, have four shares, or three or two, or one."

4 But the passage of MANU, expressing that "The property of a *Brahmana* shall never be taken by the king," intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe].

5 Among brothers, such as are of the whole blood, take the inheritance in the first instance, under the text before cited : "To the nearest *sapinda*, the inheritance next belongs" Since those of the half blood are remote through the difference of the mothers.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

7 On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8 In case of competition between brothers and nephews, the nephews have no title to the succession : for their right of inheritance is declared to be on failure of brothers ("both parents, brothers likewise, and their sons." Sect. 1. § 1.)

9. However when a brother has died leaving no male issue (not other nearer heir,) and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition or their brother's estate takes place, his sons do in that case acquire a title through their father : and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

SECTION V.

Succession of kindred of the same family name termed Gotraja, or gentiles.

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage no place, however, is found for her in the compact series of heirs from the father to the nephew : and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must therefore of course succeed immediately after the nephew ; and thus there is no contradiction.

3. On failure of the paternal grandmother, the (*gotraja*) kinsmen sprung from the same family with the deceased and (*sapinda*) connected by funeral oblations namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*bandhu* Sect. 6.)

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations

6. If there be none such, the succession devolves on kindred connected by libations of water. and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food. or else, as far as the limits of knowledge as to birth and name extend. Accordingly *Vrihat-Manu* says : "The relation of the *sapindas*, or kindred connected by the funeral oblation, ceases with the seventh person and that of *samanodacas* or those connected by a common libation of water, extend to the fourteenth degree, or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by *gotra* or the relation of family name"

SECTION VI.

On the succession of cognate kindred, bandhu

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds, related to the person himself, to his father, or to his mother as is declared by the following text. The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned his mother's cognate kindred."

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance. on failure of them, his father's cognate kindred or if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

SECTION VII.

On the succession of strangers upon failure of the kindred.

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of *APASTAMBA*. "If

there be no male issue, the nearest kinsman inherits ; or in default of kindred, the preceptor ; or failing him, the disciple."

2. If there be no pupil, the fellow student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of his sense of scripture, from the same preceptor, is a fellow student.

3. If there be no fellow students, some learned and venerable priest should take the property of a *Brahmana*, under the text of GAUTAMA : "Venerable priest should share the wealth of a *Brahmana*, who leaves no issue."

4. For the want of such successors, any *Brahmana* may be the heir. So MANU declares : "On failure of all those, the lawful heirs are such *Brahmanas*, as have read the three *Vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."

5. Never shall a king take the wealth of a priest : for the text of MANU forbids it : "The property of a *Brahmana* shall never be taken by the king : this is fixed law." It is also declared by NARADA : "If there be no heir of a *Brahmana's* wealth on his demise, it must be given to a *Brahmana*. Otherwise the king is tainted with sin."

6. But the king, and not a priest, may take the estate of a *Kshatriya* or other person of an inferior tribe on failure of heirs down to fellow student. So MANU ordains ; "But the wealth of the other classes on failure of all [heirs,] the king may take."

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. It has been declared, that sons and grandsons [or great grandsons] take the heritage ; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws : "The heirs of a hermit, of an ascetic, and of a professed student, are in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The student (*brahmachari*) must be a professed or perpetual one ; for the mother and the rest of the natural heirs take the property of a temporary student and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.]

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theo-

logy, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

5. A spiritual brother and associate in holiness takes the good of a hermit (*qanaprast'ha*.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. But on failure of those (namely the preceptor and the rest,) any one associated in holiness takes the goods; even though sons and other natural heirs exist.

7. Are not those, who have entered into a religious profession, unconcerned with hereditary property? since VASISHT'HA declares "They, who have entered into another order, are debarred from shares." How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth; for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,] are forbidden to him. And, since GAUTAMA ordains, that "A mendicant shall have no hoard;" the mendicant also can have no effects by himself acquired

8. The answer is, a hermit may have property for the text [of YAJNYAWALKYA] expresses "The hermit may make a hoard of things sufficient for a day, a month, six months or a year; and in the month of *Asvina*, he should abandon [the residue of] what has been collected." The ascetic too has clothes, books and other requisite articles: for a passage [of the *Veda*] directs, that "he should wear clothes to cover his privy parts" and a text [of law] prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. It was therefore proper to explain the partition or inheritance of such property.

SECTION IX.

On the reunion of kinsmen after partition.

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. A reunited [brother] shall keep the share of his reunited [coheir] who is deceased, or shall deliver it to [a son subsequently] born.

2 Effects, which had been divided and which are again mixed together, are termed reunited. He, to whom such appertain, is a reunited parcener.

3. That cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle. as VAIHASPATI declares. He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed reunited.

4. The share or allotment of such a reunited parcener deceased must be delivered by the surviving reunited parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

5. The author states an exception to the rule, that a reunited brother shall keep the share of his reunited coheir. But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation.

6. The words "reunited brother" and "reunited coheir" are understood. Hence the construction, as in the preceding part of the text, is this. The allotment of a reunited brother of the whole blood, who is deceased, shall be delivered, by the surviving reunited brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood, and half blood, an uterine [or whole] brother being a reunited parcener, not a half brother who is so, takes the estate of the reunited uterine brother. This is an exception to what had been before said (§ 1.)

7. Next, in answer to the inquiry, who shall take the succession when a reunited parcener dies leaving no male issue, and there exists a whole brother not reunited, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother being again associated may take the succession, not a half brother though not reunited; but one united [by blood, though not by coparcenary,] may obtain the property; and not [exclusively] the son of a different mother

8. A half brother, (meaning one born of a rival wife,) being a reunited parcener, takes the estate; but a half brother, who was not reunited, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession,

9. The term "not reunited" is connected also with what follows; and hence even one who was not again associated, may take

SECTION X

On exclusion from Inheritance.

1 The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the reunited partner. "An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified.] must be maintained, excluding them, however, from participation."

2 "An impotent person;" one of the third gender (or neuter sex) "An outcast," one guilty of sacrilege or other heinous crime. "His issue," the offspring of an outcast. "Lame," deprived of the use of his feet. "A madman," affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot;" a person deprived of the internal faculty meaning one incapable of discriminating right from wrong. "Blind," destitute of the visual organ. "Afflicted with an incurable disease," affected by an irremediable distemper, such as marasmus or the like.

3 Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus Vasistha says, "They, who have entered into another order, are debarred from shares." Nareda also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate; much less, if they be sons of the wife by an appointed kinsman." Manu likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage. and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."

4. Those who have lost a sense [or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only; and the penalty of degradation is incurred, if they be not maintained. For Manu says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power; for he, who gives it not, shall be deemed an outcast." "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his co-heirs, is not deprived of his allotment.

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6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his co-heirs, is not deprived of his allotment.

7. If the defect be removed by medicaments or other means [as penance and atonement] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares, the distribution"

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. The disinheritance of the persons above described seeming to imply disinheritance of their sons, the author adds "But their sons, whether legitimate or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Of these [two descriptions of offspring] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. The author delivers a special rule concerning the daughters of disqualified persons. "Their daughters must be maintained likewise, until they are provided with husbands"

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the wives of disqualified persons. "Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so indeed should those, who are perverse."

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled; and so may those, who are perverse. These last may indeed be expelled, but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

the effects of a deceased reunited parcener, 'Who is he? The author replies: "one united," that is one united by the identity of the womb [in which he was conceived;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not reunited in coparcenary.

10. The term "united" likewise is connected with what follows: and here it signifies reunited [as a coparcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a reunited parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated cohen.

11. Thus by the occurrence of the word "though" (*api*) in one sentence ("though not reunited" &c. § 7.) and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other, ("one united may take the property, and not *exclusively* the son of a different mother;") it is shown, that a whole brother not reunited, and a half brother being reunited, shall take and share the estate; for the reasons of both rights may subsist at the same instant.

12. This is made clear by MANU, who, after premising partition among reunited parceners ("If brethren, once divided and living again together as parceners, make a second partition; declares should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost; but his uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally.

13. Among reunited brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case;) that is, at the time of making a partition lose, or forfeit his share by his entrance into another order [that of a hermit or ascetic,] or by the guilt of sacrilege, or by any other disqualification: or if he be dead: his allotment does not lapse, but shall be set apart. The meaning is, that the reunited parceners shall not exclusively take it. The author states the appropriation of the share so reserved: His uterine brothers and sisters &c. (§ 12) Brothers of the whole blood or by the same mother, though not reunited, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that equally; not by a distribution of greater and less shares. Brothers of the half blood, who were reunited after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

DAYA-BHAGA.

A TREATISE ON INHERITANCE,

BY

JIMUTAVAHANA.

CHAPTER I.

Partition of Heritage defined and explained. Two periods of partition of the Father's wealth.

1. Partition of heritage, on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of MANU and the rest) should be explained for their information. Hear it, O ye wise!

2. First, the term Partition of Heritage (*dāyabhāga*) is expounded: and, on that subject, NARADA says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise Partition of Heritage."

3. What came from the father is "paternal:" and this signifies property arising from the father's demise. The expressions "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the goods of any relation by any relatives. Accordingly NARADA, having premised "partition of heritage" as a topic of litigation, (§ 2) shows, under that head of actions, the distribution of effects left by the mother and the rest. So MANU, likewise, premising inheritance, propounds the division but without employing the word father or any other specific term of effects of any relative.

4. The term "heritage," by derivation, signifies, "what is given." However, the use of the verb (*dā*) is here secondary or metaphorical; since the same consequence is produced, namely that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there

is no abdication of the deceased and the rest in regard to the goods.

5. Therefore, the word "heritage" is used to signify wealth, in which property, dependent on relation to the former owner, arises on the demise of that owner.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattel's not being united with the heritage of a coheir? The first position is not correct; for the heritage itself would be destroyed. Nor is the second accurate: for though goods be conjoined, it may be said, "this chattel, which was before parted, is not my property, but my brother's."

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the coheirs, through the sameness of their relation, over all the goods. For relation, opposed by the coexistent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless as there would not result a power of aliening at pleasure.

8. The answer is: Partition consists in manifesting [or in particularizing] by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.]

10. Even in this case where a single article, as a female slave, a cow, or the like, is common to many, the property is served by separate use, in carrying burdens, or in milking during specific periods, in turn, as directed by VRIHASPATI. "A single female slave should be employed on labor in the houses [of the several coheirs] successively, according to the number of shares..and water of wells or ponds is drawn for use according to need [without stint].....such property [as is regularly not divisible] should be distributed by equitable adjustment: else it would be useless [to the owners.]" These three half stanzas occur in many places, [as quotations from this author,] though not found in their regular order [in his institutes of law.]

11. Does it not follow from the text of NARADA, ("let sons regularly divide the wealth when the father is dead") which authorizes sons to divide their father's effects after his decease that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

12. The answer is this: since it is, the practice of people to

call an estate their own, immediately after the demise of their father or other predecessor ; and the right of property is acknowledged to vest without partition in the case of an only son : the demise of the relative is the cause of property. Consequently there is no room for any misconstruction.

13. Acquisition is the act of the acquirer ; and one who has the state of ownership dependent on acquisition, is the acquirer. Is not birth therefore, as the act of the son, rightly deemed his mode of acquisition ? and have not sons, consequently, a proprietary right, during their father's life [even without his being degraded or otherwise disqualified ;] and not by reason of his demise ? and therefore is it declared " in some cases birth alone [is a mode of acquisition,] as in the instance of a paternal estate.

14. That is not correct : for it contradicts MANU and the rest. " After the [death of the] father and the mother, the brethren, being assembled, must divide equally the paternal estate . for they have not power over it, while their parents live."

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living . namely because they have not ownership at that time.

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son ; for there is no evidence of property then vested ; but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase " what they earn " or acquire.

17. Besides it would contradict revealed law, if these persons had not ownership even in that which is by them earned ; since religious rites, enjoined by holy writ, which must be effected by means of their own wealth, would be prevented.

18. DEVALA, too, expressly denies the right of sons in their father's wealth " When the father is deceased, let the sons divide the father's wealth for sons have not ownership while the father is alive and free from defect."

19. Besides, if sons have property in their father's wealth, partition would be demandable even against his consent and there is no proof, that property vested by birth alone , nor is birth stated in the law as means of acquisition.

20. In some places it is alleged . but there, by the mention of birth, the relation of father and son, and the demise of the father are mediately indicated as causes of property.

21. The right of one may consistently arise from the act of another , for an express passage of law is authority for it , and that is

actually seen in the world, since, in the case of donation, the donee's right to the thing arises from the act of the giver; namely from his relinquishment in favor of the donee who is a sentient person.

22. Neither is property created by acceptance; since it would follow, that the acceptor was the giver; for gift consists in the effect of raising another's property; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice. Besides the word gift occurs in passages of law as signifying something antecedent to acceptance.

23. Is not receipt acceptance? for the affix in the word *svicara*, implies a thing becoming what it before was not; and the act of making his own (*svan curvan*) what before was not his, constitutes appropriation or acceptance (*svicara*.) How then can property be antecedent to that?

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure; and such is the meaning of the term 'acceptance' or 'appropriation' From its association with teaching, and assisting at sacrifices, receipt (*pratigraha*) is, without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Besides in the case of goods left by a brother or other relative, the property of the rest of the brethren or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. Hence [that is, because property is not vested in sons while the father lives, or because property is not by birth, but by survival, or because the demise of the ancestor is a requisite condition,] the passage before cited, beginning with the words "after the [death of the] father," being intended to declare property vested at that period, [namely at the moment of the father's decease] recites partition which of course then awaits the pleasure [of the successor.] For it cannot be a precept, since the same result [respecting the right of partition, at pleasure,] was already obtained [as the necessary consequence of a right of property.]

27. Nor can it be a restrictive injunction. For as that is contrary to the text of Manu "either let them thus live together; or let them dwell apart for the sake of religious merit;" and as it produces visible consequences *only*, [not any unseen or spiritual result,] it can

neither be an injunction for an *immediate* partition, nor a limitation of the time."

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period; for there is not in this instance, as in that of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life: and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning without need of a special precept for the purpose.]

29. *Therefore, the text of Manu must be argued [by you] to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. Hence the text of Manu and the rest (as Devala § 18) must be taken as showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text; the other by its import.

31. Mere demise is not exclusively meant; for that intends also the estate of a person degraded, gone into retirement, or the like: by reason of the analogy, as occasioning an extinction of property.

32. Accordingly NARADA says: "When the mother is past child-bearing, and the sisters are married, or if the father be lost, or no longer a householder, or if his temporal affections be extinct.

33. "Lost" signifies degraded: "no longer a householder," having quitted the order of a householder. If the reading be "when he is exempt from death," then the sense is "when being exempt from death (that is alive,) he is devoid of affections." The variation in the reading is unfounded.

34. Here also, to show, that the sons' property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge; and the right of the ownership suggests that knowledge.

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brethren being assembled, &c." Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between two coheirs.

36. Is not the eldest son alone entitled to the estate, on the demise of the coheirs? and not the rest of his brethren? for MANU

says : "The eldest brother may take the patrimony entire ; and the rest may live under him, as under their father." And here eldest intends him who rescues his father from the hell called *Put* ; and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ancestors ; such a son, therefore, is entitled to take the heritage. That son alone, on whom he devolves his debt, and through whom he tastes immortality, was begotten from a sense of duty : others are considered as begotten from love of pleasure."

37. Not so : for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus NARADA says : "Let the eldest brother, by consent, support the rest, like a father ; or let a younger brother, who is capable, do so : the prosperity of the family depends on ability." By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For MANU declares : "Either let them thus live together, or let them live apart for the sake of religious merit : since religious duties are multiplied apart ; separation is, therefore, lawful." By the terms together or apart, and for the sake, he shows it optional at their choice.

38 Thus there are two periods of partition : one, when the father's property ceases ; the other by his choice, while his right of property endures.

39. But three periods must not be admitted ; one, when a father dies ; another, when he is devoid of wordly regards, and the mother's courses have ceased : and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished ;) since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age :] for the nubile age, as ordained by MANU, is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged twenty-four ; and the age prescribed for entering into another order is fifty years.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate : that is denied ; for it might be thence inferred, that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal regard.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise ; 1. the demise of the father ;

2, his degradation ; 3. his disregard of secular objects ; 4. his own choice.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age, &c.,] has been asserted through ignorance of express passages of law [to the contrary.] Thus HARITA says : " While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But, if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases." So SANKHA and LIKHITA explicitly declare : " If the father be incapable, let the eldest manage the affairs of the family, or with his consent, a younger brother conversant with business. Partition of the wealth does not take place, if the father be not desirous of it, when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the goods of the rest ; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives.

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder direct, that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited therefore, runs "not if the father desire it not ;" and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place &c."

44. Therefore two periods only are rightly affirmed : one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise ; the other by the choice of the father, while his property still subsists.

45. The condition "when the mother is past child-bearing" regards wealth inherited from the paternal grandfather. Since other children[†] cannot be born by her, when her courses have ceased, partition among sons may then take place : still, however, by the choice of the father. But, if the hereditary estate were divided, while she continued to be capable of bearing children, those, born subsequently, would be deprived of subsistence. Neither would that be right ; for a text expresses, "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support : and the dissipation of their hereditary maintenance is censured."

46. It is because there are two periods of partition, in the case of the father's wealth, that MANU, GAUTAMA and others, avoid the word "dead," and use the term "after." Since the father's right then ceases, the term "after" is employed to express that sense. Hence there is one period of partition. Another, regulated by his choice,

while he does retain worldly affections, is indicated by the text "a son born after the division &c."

47. The condition, "and when the sisters are married" does not intend a distinct period, but inculcates the necessity of disposing of them in marriage : as the text of NARADA "What remains of the paternal inheritance over and above the father's obligations and after payment of his debts, may be divided by the brethren ; so that their father continue not a debtor ;" is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

48. From that text of NARADA, it results, that coheirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly YAJÑAWALKYA propounds the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of their mother's property, after payment of her debts and the male issue, in default of daughters." This will be fully considered under the head of debt.

49. Or the restriction may signify, that the mother's effects should be shared by his sons, if their sisters have been given in marriage: but, if they be unmarried, the inheritance is held in common with them. This will be explained in due time.

50. It is thus established [by reasoning, as well as by positive law,] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.]

CHAPTER II.

Partition, made by a Father,—of Property ancestral,—and of his own acquisitions.

1. In the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded. On that subject VRIHASPATI says 'On the demise of both parents, participation among brothers is allowed and even while they are both living, it is right if the mother be past child-bearing.'

2. This passage does not relate to the father's wealth ; for the text, concerning the exclusive right of a son born after partition, would be without relevancy : since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods : for she would thus be stripped of her wealth. The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of her choice : for there can be no partition, without a will to make it.

4. If it be asked, 'admitting a choice, whose must it be?' The answer is, 'the father's'; as deduced from the text of GAUTAMA : "After the [demise of the] father, let sons share his estate. Or while he lives, if the mother be past child-bearing, and he desire partition."

5. Hence [since such is the import of VRIHASPATI'S text] the decease of both parents is one period [for the partition of the grandfather's estate] and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness] to be made only after the decease of the mother.

6. The mention of the mother's demise, does not here imply partition of her goods : since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person, for the legality of partition in the instance of survival is there propounded, (as appears from the word even,) in the same case, in which the demise of both parents was declared a reason of distribution. The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

8. A division of it does not take place without the father's choice : since MANU, NARADA, GAUTAMA, BAUD'HAYANA, SANKHA and LIKHITA, and others, (in the following passages, "they have not power over it," "they have not ownership while their father is alive and free from defect," while he lives, if he desire partition" "partition of heritage by consent of the father," "partition of the estate being authorized while the father is living," &c.) declare without restriction, that sons have not a right to any part of the estate, while the father is living, and that partition awaits his choice. for the texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.

9. The text of YAJNYAWALKYA ("The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels,") properly signifies, as rightly explained by the learned UDYOTA, that, when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son; and the other survives; and the father afterwards deceases; the

text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate : so have his sons, if he be dead. There is not in that case, any distinction founded on greater or less propinquity ; for both equally confer a benefit by offering a funeral oblation of food, as enjoined at solemn obsequies. Such is the author's meaning.

10. Accordingly a great-grandson, whose father [as well as grandfather] is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has male issue and the other has none, the children of that one would participate, since [according to your opinion] they have equally ownership.

12. It should not be objected that such cannot be the meaning of the text, as not being the subject premised. for the case of grandsons by different fathers, was the proposed subject.

13. A "corrody" (§ 9) signifies what is fixed by a promise in this form, "I will give that in every month of *Curtici*."

14. "Chattels."] From their association with land, slaves must be here meant.

15. Or the meaning of the text (§ 9) may be as set forth by DHARESWARA, "A father, occupied in giving allotments at his pleasure, has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it, at his choice, as he is in regard to his own acquired wealth."

16. So VISHNU says "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But, in the estate inherited from the grandfather, the ownership of father and son is equal."

17. This is very clear. When the father separates his sons himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself but not so, if it were property inherited from the grandfather ; because they have an equal right to it. The father has not in such case an unlimited discretion.

18. Hence [since the text becomes pertinent by taking it in the sense above stated ; or because there is ownership restricted by law in respect of shares, and not an unlimited discretion ;] both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected

19. Other texts should be explained in the very same manner.

20. It is consequently true, [since the texts above cited do not imply co-ordinate ownership,] that the father has his double share of wealth inherited from the grandfather or other ancestor ; and that a distribution takes place at the will of the father only, and not by the choice of his sons.

21. "If the father recover paternal wealth [seized by strangers, and] not recovered [by other shares nor by his own father,] he shall not, unless willing, share it with his son for in fact it was acquired by him." In this passage, MANU and VISHNU, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of hereditary wealth not acquired [that is, recovered, by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he retrieved, but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. The father has ownership in gems, pearls and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions, and has power to distribute them unequally, as YAJÑYAWALKYA intimates. "The father is master of the gems, pearls and corals, and of all [other moveable property] but neither the father, nor the grandfather, is so of the whole immoveable estate."

23. Since the grandfather is here mentioned, the text must relate to his effects. By again saying "all" after specifying "gems, pearls &c" it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land &c. but not of immoveables, a corrody and chattels [i. e. slaves.] Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, because [immoveables and similar possessions are] means of supporting the family. For the maintenance of the family is an indispensable obligation ; as MANU positively declares, "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore [let a master of a family] carefully maintain them."

24. The prohibition is not against donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning [if the gift of even a small part were forbidden.]

25. From the express mention of immoveables, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrody or of slaves.

26. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold or

otherwise disposed of : as appears from the obvious sense of the passage ; and because it is directed, that a man should by all means preserve himself.

27. It should not be alleged, that by the texts of VYASA ("A single parcener may not without consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables : for one has not power over the whole, to give, mortgage or sell it,") one person has not power to make a sale or other transfer of such property. For here also [in the very instance of land held in common,] as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

28. But the text of VYASA (§ 27,) exhibiting a prohibition, are intended to show a moral offence : since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

29. So likewise other texts (as this, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them *should* not be made by him, unless convening all the sons,") must be interpreted in the same manner. For here the words "should be made" must necessarily be understood.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null : for a fact cannot be altered by a hundred texts.

31. Accordingly [since there is not in such case a nullity of gift or alienation] NARADA says. "When there are many persons sprung from one man, who have duties apart, and transactions apart, and, are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."

32. We resume the subject. Thus, for the reasons before stated since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous ; and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition ; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, [according to DHARESWARA's interpretation ; [§ 15] or it must intend the equal right of a nephew whose father is deceased, to share with his uncle ; conformably with the other exposition. [§ 9.]

33. Thus [since sons have not power to require partition] a divison even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite, the mother should have ceased to be capable of

bearing issue : whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property [the father's estate or the grandfather's] without distinction.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

35. In such cases, if the father voluntarily make a partition with his sons he may reserve for himself a double share of property ancestral. For *VRIHASPATI*, saying "The father may himself take two shares at the partition made in his life-time ;" and *NARADA* "Let the father, making a partition, reserve two shares for himself ;" do so ordain, without restriction.

36. Besides, a double share of the grandfather's wealth is the father's due by this [following] argument.

37. Deduction of a twentieth part (with the best of all the chattels,) and of half a twentieth, and of a quarter thereof, are propounded by a passage of *MANU* : ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels ; for the middlemost, half of that ; for the youngest a quarter of it,") and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author : ("If a deduction be thus made, let equal shares of the residue be allotted but if there be no deduction, the shares must be distributed in this manner ; let the eldest have a double share ; and the next born, a share and a half ; and the youngest sons each a share : thus is the law settled.") *GAUTAMA* likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair [of goats or sheep,] a car, together with beasts that have teeth in both jaws, and also a cow and bull ;" (*i. e.* a pair of goats, or the like, a car with horses, or the other beasts having teeth in both jaws, and a bull together with cow ; all this shall belong to the eldest ;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or disfigured, shall belong to the middlemost, if there be more than one ;" (*i. e.* aged or old, dwarfish or stunted, disfigured or having a distorted tail ; these shall appertain to the middlemost, provided the cattle be numerous ;) and after further directing, that "A sheep, grain, iron, a house, and, together with a cat, one of each sort of quadruped, shall be given to the youngest ; all the residue shall be equally divided ;" (*i. e.* a sheep and other things, as specified, shall be allotted to the youngest ; but let the brethren divide equally the whole of the residue.) has by the following passage allotted a double share to the eldest : "Or let the first born have two shares, and the rest take one a piece."

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of

two shares is directed "if there be no deduction:" now a deduction could not be supposed in the case of an acquisition; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, [as a share and a quarter,] to them, would be incongruous, and the use of the term "eldest" &c. would be impertinent.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, MANU ordains, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for woman." Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates, that a male would have had a double share [in right of his being eldest.]

40. In regard to what is said, that as in the instance of the *Hólácá*, a passage of revelation to the effect, "The "*Hólácá* ought to be performed," is assumed for the justification of the practice of celebrating that festival which is in use among the *Práchyas*; (for it can be sufficiently justified by such a passage; and one, containing the word *Práchyas* or other restrictive term, need not be supposed, since the proof of it would be burdensome;) so in this case likewise, a passage of revelation in these words, "Let the acquirer take a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right, for, in the one case, the practice observed by the *Práchyas* can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term *Práchya* must be supposed for the sake of justifying the omission of that festival by others than *Práchyas*. Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since MANU and the rest use the word "eldest," a passage of scripture containing that term ought to be presumed to justify its insertion; not one exhibiting the word "acquirer;" since there is no necessity for assuming this nor is there any special authority for the proof of one containing both terms. It should not be alleged, that, since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible; for if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage of scripture, containing three, four, or more terms, may be any how inferred from reasoning; and the terms of the whole law may be

made to relate to it, by interpreting them according to analogy & metaphor; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained; more should not be presumed. And such is the import of the reasoning instanced under the head of *Hólácá*.

41. Accordingly [since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share,] *VASISHTHA*, having ordained a double share for the eldest brother, separately propounds the allotment of two shares to the acquirer. Thus, after premising "Partition of heritage among brothers" he says "Let the eldest take two shares;" and at no great distance adds: "He, amongst them, who has made an acquisition, may take a double portion of it." Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother, would be impertinent.

42. The right of taking a double share, too, is not confined to the case of primogeniture. Thus *VRIHASPATI* says: "The eldest by birth, by science and by good qualities, shall obtain a double share of the heritage, and the rest shall share alike: but he is as a father to them." If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. This double portion is applicable to the case of partition among whole brothers [or among half brothers only,] and the deduction of a twentieth part for the eldest is relative to partition among brothers, of both the whole and the half blood. For *VRIHASPATI* says: "All sons of regenerate men, born of women equal by class, should share alike after giving a deduction to the eldest."

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being of the whole blood.

45. The deduction also of one in ten cows &c. must not be made. So *MANU* declares: "Among brothers successful in the performance of their duties there is no deduction of the best in ten, though some trifle, as a mark of greater veneration, should be given to the first born."

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connexion with

the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth ? *VRIHASPATI*, extending to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited (§ 42,) does thereby intimate a maxim, that the father shall have two shares : and the maxim is actually propounded by *VRIHASPATI* ; for he ordains such an allotment in general terms : "The father may himself take two shares at a partition made in his lifetime." So *NARADA* says : "Let the father, making a partition, reserve two shares for himself ; and the mother shall take an equal share with her sons, if her husband be deceased."

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not, "A father, distributing his own goods, may take two shares : " for that would contradict the doctrine before stated.

48. Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,] it must be affirmed, that as much as is the father's share, so much [in number and quantity,] is the son's : not, that the very same effects, and same in quantity, which are the father's, are also the son's : for thus the property would be in common ; and it might be concluded, that like the goods of husband and wife, no partition thereof could take place.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued ;] the eldest, together with his son, would have four shares, if two must be allotted to his son, at the same time that two are allotted to the eldest himself in right of primogeniture : and one share only would belong to another brother. Thus, if the eldest brother have many children, and equal portions must be assigned to them, as to their father, a mere trifle would remain for a younger brother, which would be in contradiction to great authorities.

50. As for the text of *VRIHASPATI* : "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and of son is ordained : " its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers ; [one the natural, and the other the adoptive parent.]

52. The passage, which declares, that "the ownership of father and son is the same," has been already expounded (§ 9. &c.)

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed,

it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property. But if he be not the eldest son of his father, he takes only an equal share with his sons.

54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of paternity ; and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms. ^

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth ; as appears from the circumstance, that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or three shares. Nor can the text be restrictive, for it would contradict VISHNU, who says : " When a father separates his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal.

56. The meaning of this passage is, ' In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law : but not so, in the case of property ancestral.'

57. Accordingly HARITA says : " A father, during his life distributing his property, may retire to the forest, or enter into the order suitable to an aged man ; or he may remain at home, having distributed small allotments and keeping a greater portion : should he become indigent, he may take back from them."

58. By this text the father is authorized to distribute a small part, and to reserve the greatest portion of his wealth. " The order suitable to an aged man," intends retirement.

59. As for the text of SANKHA and LIKHITA, " If he be son of one father (*ekaputra*), he may allot two shares to himself," the sense of it is this ' The word *ekaputra* means son of one man : it is not a compound epithet signifying one who has an only son ; for that mode of construction prevails less than the other. " A son of one man " is a true legitimate son. The father, being such, is entitled to a double share . not so one who is (*kshetrāja*) issue of the soil, though he be the father of the family.' But the text before cited (§ 9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (*kshetrāja*) issue of the soil or wife.

60. The offspring of the soil is indeed son of two fathers. BAUDHAYANA declares him so . " The son who is begotten by another

on the authorized wife of a man deceased, impotent, or distempered, is son of the soil. He is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both.

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (*kshetrāja*) the son of the soil.

62. So NARADA says : "The produce of seed, which is sown in a field with permission of a proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil.

63. Hence [since the compound epithet is a construction not to be preferred,] and because the term (*ekaputra*) ought to be made significant in the passage in question, as an epithet of the agent in the sentence ; the notion, that it is vaguely used as an epithet of the subject, is confuted.

64. Besides, one, who continually explains in a vague sense, terms used by authors transcendently wise, as MANU, GAUTAMA, DASHA and the rest, only demonstrates his own unsettledness.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general : "let him reserve two shares;" or "he may take two shares." CATYAYANA declares it very explicitly : "A father takes either a double share, or a moiety, of his son's acquisition of wealth ; and a mother also, if the father be deceased, is entitled to an equal portion with the son."

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. It must not be explained thus : 'From the acquisition of both son and wealth, the father becomes entitled to two shares ; but from no acquisition of a son, the owner keeps the whole.' For it is admitted, that, when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth : how then can he keep the whole ? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares ; but, if there be none, he keeps the whole : and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property ; and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so [by the wise.] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

68 It must not be argued, that the precept would be superfluous, since the son's right to a double share is demonstrable, because

the wealth was acquired by him ; and since the father's right to two shares is also deducible independently of this text ; [and] their equal participation may be thence inferred. The precept is significant : since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

69. Besides, if the term " acquisition of wealth " be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated ? That it cannot intend a restriction [to those two cases] nor relate to the father's own goods, has been already shown [from two passages before cited :] and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

70. Nor does the text intend his taking a moiety of two shares, or in other words a single share. For moiety and share being relative terms, imply a something of which they are parts : and since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term " double share," in construction with " acquisition of wealth " in the ablative, is unexceptionable, it is also right to construe the word moiety with it ; for the terms are contiguous. A moiety of the wealth, therefore, is meant ; not a moiety of two shares, or in other words a single share. for it would be improper, while the obvious term, " a single share," might have been used, to employ a term, which does not express that sense. A moiety of wealth, then, is the right interpretation.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate ; the son, who made the acquisition, has two shares ; and the rest, take one a piece. But, if the father's estate has not been used, he has two shares ; the acquirer, as many ; and the rest are excluded from participating.

72 Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety : for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Therefore, the meaning of the texts is, that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. Among his sons, he may make the distribution, either by giving [to the first born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as token of esteem, on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety : the father, so doing, acts lawfully.

75. YAJNYAWALKYA declares it : ' A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]. So VRIHASPATI : " Shares which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised " NARADA likewise : " For such as have been separated by their father with equal, greater, or less allotments of wealth, this is a lawful distribution : for the father is lord of all."

76. Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth. Accordingly VISHNU says, " When a father separates his sons, from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal."

77. As a superior allotment, in the form of a deduction, is indicated by a passage of YAJNYAWALKYA, (" When the father makes a partition, let him separate his sons according to his pleasure ; and either dismiss the eldest with the best share ; or, if he choose, all may be equal sharers.") How is any other unequal distribution here ordained ? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers, after the demise of the father.

78. Perhaps the text is pronounced for the purpose of legalizing an equal distribution made by the father without the authorized deductions ? No : for then a less allotment only is declared lawful, as made by the father ; and the word greater would be impertinent.

79. Besides if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza (" let him separate his sons according to his pleasure,") becomes superfluous ; for that, which was to be declared, is fully specified in three other verses of that text. But according to our interpretation, the phrase, " let him separate his sons according to his pleasure," relates to his own acquired wealth ; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous.

80. Moreover, two modes of partition after the death of the father are actually declared by VRIHASPATI in these words ; " Partition of two sorts is ordained for coheirs : one, in the order of seniority ; the other, by allotment of equal shares." By saying "in the order of seniority," the author indicates specific deductions. Equal participation is the other mode. Now, since two sorts of mutual partition among brothers are thus expressly deduced, there would be no distinction between that and a distribution made by a father.

81. So NARADA says : " The father, being advanced in years, may himself separate his sons ; either dismissing the eldest with the best share, or in any manner as his inclination may prompt."

82. The unequal distribution, here intended, appears evidently to be different from that, which consists in giving the best share to the first born ; since the author, having noticed the allotment of the best share to the eldest, again says " or as his inclination may prompt ;" thereby distinctly authorizing any unequal distribution, which the father, for reasons before-mentioned, may think proper to make.

83. But the text of NARADA, which expresses, that " A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate ;" relates to the case where the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favourite wife, makes distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on [either of the four] reasons above-mentioned.

84. Thus CATYAYANA says : " But let not a father distinguish one son at a partition made in his life-time, nor on any account exclude one from participation without sufficient cause."

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. [This does not relate to specific deductions :] for the distinguishing of sons by allotting to them the prescribed deductions [of a twentieth, and half or a quarter of a twentieth,] extends to many [viz. eldest, middlemost and youngest ;] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is " even one son." The distinguishing of one, [as here forbidden,] has no reference to specific deduction : but intends a distribution made according to the father's mere pleasure, as before explained.

86. However, when sons request partition in the father's life-time, an unequal allotment should not be granted by him. MANU

declares it. "Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case."

87 But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution; and the allotment of greater or less shares is alone forbidden.

88. Thus partition made by a father [has been explained.]

CHAPTER V.

Exclusion from Inheritance.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known by the exception, competent heirs. On this subject APASTAMBA says, "All coheirs, who are endued with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

2. This passage is read by BALOCA in a confused manner and contrary sense: "But, he who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorized.

3. So "The heritable right of one who has been expelled "from society, and his competence to offer oblations of food and libations of water, are extinct." One who has been expelled from society, is a person excluded from drinking water in company.

4. So VRIHASPATI says, "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen, offering funeral oblations [to the owner,] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

5. APASTAMBA says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole *Veda*."

6. "Since a son delivers his father from the hell called *put*,

therefore he is named *puttra* by the self-existent himself." By this and similar passages, great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly MANU says, "All those brothers, who are addicted to vice, lose their title to the inheritance."

7. So [the same author :] "Impotent persons and outcasts are excluded from a share of the heritage ; and so are persons born blind and deaf ; as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb.]"

8. The impotent person is described by CATYAYANA : "That man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen."

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One who is incapable of articulating sounds is dumb. An idiot is a person not susceptible of instruction.

10. YAJÑAWALKYA says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, [as well as others similarly disqualified,] must be maintained ; excluding them however from participation." One, who cannot walk, is lame.

11. Although they be excluded from participation, they ought to be maintained, excepting however the outcast and his son. That is taught by DEVALA : "When the father is dead [as well as in his lifetime] an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicity,] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicity is one who has become a religious wanderer or ascetic.

12. By the term outcast, his son also is intended ; for he is degraded, being procreated by an outcast. That is confirmed by BAUDHĀYANA, who says, "Let the coheirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties : excepting however the outcast and his issue."

13. On this subject, NARADA says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance even though they be legitimate . much less, if they be sons of the wife by an appointed kinsman."

14. CATYAYANA ordains, that "The son of a woman married in

irregular order ; and begotten on her by a kinsman, is unworthy of the inheritance ; and so is an apostate from a religious order."

15. If a woman of superior tribe espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being *kshetrajā*, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate : so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

16. That is declared by CATYAYANA : But the son of a woman married in irregular order, may be heir provided he belong to the same tribe with his father and so may the son of a man, belonging to a different [but superior] tribe by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony."

17. A possibility exists of an impotent man, and the rest as above enumerated (§ 7), espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting." Issue signifies offspring.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unfit for [the preparatory] study ? The eunuch may obtain issue from his wife by means of another man ; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation. any more than a *Sūdra*.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be are entitled, provided they be free from similar defects, to take their allotments according to pretensions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by YAJNYAWALKYA. Their sons, whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported : but such as are unchaste, should be expelled ; and so indeed should those who are perverse."

20. Thus it has been explained, who are persons incompetent to inherit.

CHAPTER XI.

On succession to the state of one who leaves no male issue.

SECTION I.

On the widow's right of succession.

1. In regard [to succession] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.

2. Thus VRIHASPATI says, "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present. Dying before her husband, a virtuous wife partakes of his consecrated fire: or, if her husband die [before her, she shares] his wealth: this is a primeval law. Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half-yearly, and other funeral repasts. With presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests and females [of the family.] Those near or distant kinsmen who become her adversaries, or who injure the women's property let the king chastise by inflicting on them the punishment of robbery."

3. By these seven texts VRIHASPATI having declared, that the whole wealth of a deceased man, who had no male issue, as well the immoveable as the moveable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, [daughters,] daughter's sons and other heirs; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property shall be punished as robbers; totally denies the right of the father, the brothers and the rest to inherit the estate if a widow remain.

4. In like manner YAJNYAWALKYA says, "The wife and the daughters, also with both parents, brothers likewise and their sons, gentles, cognates, a pupil and a fellow student; on failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all

persons and classes." Thus affirming the right of the last mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

5. So VISHNU ordains : "The wealth of him, who leaves no male issue, goes to the wife ; on failure of her, it devolves on daughters ; if there be none, it belongs to the father ; if he be dead, it appertains to the mother ; on failure of her, it goes to the brothers ; after them, it descends to the brother's sons ; if none exist, it passes to the kinsmen (*bandhu*) ; in their default, it devolves on relations (*saculya*) [failing them, it belongs to the pupil :] on failure of these, it comes to the fellow student : and, for want of all those heirs, the property escheats to the king ; excepting the wealth of a *Brahmana*."

6. By this text, relating to the order of succession, the right of the widow to succeed in the first instance, is declared. It must not be alleged, that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word wealth as signifying the whole estate in respect of brothers and the rest, and not whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

7. Thus *Vrihat MANU* says, "The widow of childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."

8. "His" is repeated or understood from the words "his funeral oblation ;" for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her husband's entire share ;' not 'she shall obtain her own entire share ;' for the direction, that 'she shall obtain,' would be impertinent, in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share ; for that is known already from the enunciation of it as that person's share, [and it need not therefore be declared.]

9. Nor should it be said, that the intention of the text is to authorize the taking [or using] of the goods, [not to declare the right of property,] for the taking or using of one's own property is a matter of course.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share.] For its purpose would be spiritual ; and, if it were an injunction, a person who commanded and other particulars [as sin in the omission &c.] must be inferred.

11. It is alleged, that as in the passage, "let a son, who is

neither blind nor otherwise disqualified, take an entire share," [the meaning is], not 'his father's entire share' but 'his own complete allotment'; so, in this instance likewise, the terms are [interpreted as] relative to the widow's own complete allotment. That is not accurate; for since there is no such passage of law as that stated, the example is impertinent; or admitting that there is, still, since for the reason before-mentioned it would be impertinent as a precept, [the alleged example] will be rightly interpreted as relative to the father's share.

12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person's own wealth;] the sages do, in all instances, propound the right of a different person [as heir,] to the wealth of another [who is his predecessor;] for example, that of sons to the paternal estates, and that of widows and the rest to the goods of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person to take his own share.

13. It is alleged, that by the mention of the relative, the correlative is suggested; and thus, when the word mother is [singly] employed, it is not understood to intend a stranger's mother. This objection is irrelevant; for the maxim is applicable where the correlative is not specified and thus, when it is said "call DITT'HA's mother," neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase "his funeral oblation," can [the word share] refer to the wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10.)

14. Therefore, it is demonstrated, that *Vrihat MANU* (§ 7) declares the widow's right of taking his [that is, her husband's] entire share.

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. *SANKHA*, *LIKHITA*, *PAIT'RHINASI* and *YAMA* say, "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinsman (*sagotra*), a pupil, or a fellow student."

16. Here, in contradiction to the preceding texts, the succession of the father and mother, if there be no brother, or that of the wife, if they be both dead, is propounded.

17. So *DEVALA* ordains: "Next let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal [as appertaining to the same tribe]; or let the father if he survive, or [half] brothers belonging to the same tribe, or the mother, or the wife, inherit in their order. On failure of all these, the nearest of the kinsmen succeed."

18 Here the contradiction is, the brother being placed first of all the heirs, and the widow last.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be reunited, and the widow's right of succession is relative to the estate of one who was separated from his coheirs and not reunited with them.

20. That is contrary to a passage of VRIHASPATI, who says "Among brothers, who become reunited, through mutual affection, after being separated, there is no right of seniority, if partition be again made. Should any one of them die, or in any manner depart [by entering into a religious order,] his portion is not lost, but devolves on his uterine brother. His sister also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the reunited brethren acquire wealth by science, valour, or the like, [with the use of the joint stock] two shares of it must be given to him, and the rest shall have each a share."

21. Here, since reunion of parceners is specified at the beginning, and at the close of the text, the intermediate passage, "his share is not lost, but devolves on his uterine brother," must be understood as relating to a reunited parcener. And the author, saying this "law concerns one who leaves no issue, nor wife nor parent," declares the right of a reunited uterine brother as taking effect on failure of son, daughter, widow and parents. How then does [the reunited brother] bar the widow's title to the succession?

22. Besides the text expresses, that "his share is not lost;" and the expression is pertinent in regard to unseparated parceners and reunited coheirs, since the lapse of the share might be supposed, because the property, being intermixed with another brother's effects, is not seen apart; but, the property of a separated coheir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of VRIHASPATI vide § 20] relate to reunited coheirs.

23. Moreover, the inference, that the texts of SANKHA and others above cited, (§ 15 &c.) which declare the preferable right of the brother before the widow and the rest, relate to a reunited brother, [as well as an unseparated one] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law, for there is none which bears that meaning expressly; and the passages, concerning the succession of the reunited parcener (Sect. 5 § 13) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow.]

24. Since the texts of VRIHASPATI just now cited (§ 20) contradict that inference, for the brother's right is there declared to

take effect, in the case of reunion, on failure of son, daughter, widow and parents; brethren not reunited must be the subject [of those passages of SANKHA &c. § 15.] That alone is right; and they do not relate to [unseparated and] reunited brethren.

25. But it is said, this inference is deduced from reasoning. Thus, in the instance of reunion, [or in that of a subsisting coparcenary,] the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise, those goods belong exclusively to the survivor, since his ownership is not divested. They do not belong to the widow: for her right ceases on the demise of her husband; in like manner as his property devolves not on her, if sons or other [male descendants] be left.

26. That argument is futile. It is not true, that, in the instance of reunion [and of subsisting coparcenary,] what belongs to one, appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole: as has been before shown [when defining the term partition of heritage.] Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage ceases on his demise. But the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the reunited parcener; the answer is, no, for it is not true that the text relates to reunited parceners; since the law, which declares the brother's right of succession, may relate to reunited brethren, if it be true, that the widow's right of ownership ceases by the demise of her husband who was reunited with his coheirs; and the widow's proprietary right does so cease. Provided the law relate to the case of reunited brethren. Thus the propositions reciprocate.

28. Besides, if the texts of SANKHA, LIKHITA and the rest, (§ 15 &c.) relate to unseparated or reunited parceners, they must be interpreted as signifying, that 'the wealth of one, who is either unseparated or reunited, goes to a brother who is so; or, if there be none such, the two parents take it.' In that case, a question may be proposed, shall parents, who are separated and not reunited take the heritage? or parents who are either unseparated or reunited? Here the first proposition is not admissible; for how can the claim of parents who are separated and not reunited, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree, that a

father, being unseparated or reunited, takes the heritage in preference to an unseparated or reunited brother.

29. Moreover, as in the instance of the estate of one, who was separated from, and not reunited with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said "he himself is born a son,") and because the deceased, by participating [with the manes of the grandfather and great-grandfather] in funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather [at the same time that none are presented by his brother] for sons do not offer the half-monthly oblations of food, while their father lives; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one who is either unseparated or reunited.] Or, since they are alike in respect of coparcenary and reunion, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. Further, the dual number expressing, that 'parents, who are unseparated or reunited, take the heritage,' is unsuitable: for there is neither partition, nor coparcenary, with the mother; and consequently no reunion of estates; since VRIHASPITI says, "He, who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed reunited." He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father [and son,] brothers, uncle [and nephew,] are reunited, when, after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating, that, "The property, which is mine, is thine, and that which is thine is mine." The partnership of traders, who are not so circumstanced and only act in concert on an united capital, is no reunion. Nor are separated coheirs reunited merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither reunion nor coparcenary with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

31. In the next place the manner, in which the difficulty is removed by the wise, will be stated. From the texts of VISHNU, (§ 5.) and the rest [as YAJNYAWALKYA &c. § 4.] it clearly appears that the succession devolves on the widow, by failure of sons and other [male descendants] and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great grandson. Thus MANU and VISHNU say, "Since a son delivers [*trayate*] his father from the hell called *put*, therefore he is named *puttra* by the self-existent himself." So HARITA says, "A certain hell is named *put*;

and he, who is destitute of offspring, is tormented in hell. A son is therefore called *puttra*, because he delivers his father from that region of horror." In like manner SANKA and LIKHITA declare, "A father is exonerated in his life-time from debt to his own ancestors, upon seeing the countenance of a living son : he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three *vedas*, and sacrifices rewarded with ample gratuities, have not the sixteenth part of the efficacy of the birth of an eldest son." Thus MANU, SANKHA, VASISHTHA, LIKHITA and HARITA ordain, "By a son, a man conquers worlds ; by a son's son, he enjoys immortality ; and afterwards, by the son of a grandson, he reaches the solar abode." So YAJÑAWALKYA says, "The attainment of worlds, immortality and heaven depend on a son, grandson and great grandson."

32. Thus the proprietary right of sons and the rest is expressly ordained as already inferrible from reasoning ; because the wealth devolving upon sons and the rest, benefits the deceased : since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth ; and they present funeral oblations, half-monthly, in due form, after his decease. So MANU declares the right of inheritance to be founded on benefits conferred : By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestors : such a son, therefore, is entitled to take the heritage.

33. From the mention of it as a reason ("therefore" &c.) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which MANU assents, that, the right of succession is grounded solely on the benefits conferred.

34. Accordingly [since benefits are derived from the great-grandson as well as from the son,] the term "son" [in the text of MANU, § 32, or in that of VISHNU, § 5, or in those of YAJÑAWALKYA &c.] extends to the great grandson ; for, as far as that degree descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obseques.

35. Else [if it were not inferrible from reason, or if MANU did not mean, that the right of succession rests upon benefits conferred ;] the word son could not quit its proper sense, [for a larger import ;] and a passage, declaratory of the grandson's right, must be somehow assumed. But admitting that such a passage may be assumed [as inferrible from the declared right of a daughter's son considered as a son's son ;] still there is no separate text concerning the great grandson.

36. Therefore the great grandson's right of succession is founded

on benefits derived from him ; and the word son is of comprehensive import.

37. Accordingly, BAUDHAYANA says, "The paternal great grandfather, and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his son's son and his great grandson : all these, partaking of undivided oblations, are pronounced *sapindas*. Those who share divided oblations, are called *saculyas*. Male issue of the body being left, the property must go to them. On failure of *sapindas* or near kindred, *saculyas*, or remote kinsmen, are heirs. If there be none, the preceptor, the pupil, or the priest, takes the inheritance. In default of all these, the king, [has the escheat."

38. The meaning of the passage is this : since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies ; and since the son and other descendants, to the number of three, present oblations to the deceased [or to be shared by his manes,] and he, who, while living, presents an oblation to an ancestor, partakes, when deceased of oblations presented to the same person ; therefore, such being the case, the middlemost [of seven,] who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their lifetime, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving] descendants beyond the third degree.] Hence those [ancestors] to whom he presented oblations and those [descendants,] who present oblations to him, partake of an undivided offering in the form of (*pinḍa*) food at obsequies. Persons who do partake of such offerings, are *sapindas*. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated *saculyas*, as partaking of divided oblations, since they do not participate in the same offerings.

39 This relations of *sapindas* [extending no further than the fourth degree,] as well as that of *saculyas*, has been pronounced relatively to inheritance.

40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies,] MANU likewise, after premising "Not brothers, nor parents, but sons are heirs of the father ; proceeds, in answer to the question why ? to declare, "To three must libations of water be made, to three must oblations of food be presented ; the fourth in descent is the giver of those offerings - but the fifth has no concern with them."

41. But for mourning and other purposes, the relation of *sapindas* extends to such as partake of the remains of oblations ; for that relation is defined in the *Marcandeya purana* as founded on participation in the wipings of offerings. "Three others, from the grandfather's grandsire upwards, are declared to be partakers of the residue of oblations : they, and the person who performs the religious rite, being seventh in descent, constitute that relation which is termed by the holy sages kin within the seventh degree." The meaning here is kin which occasions impurity [on occasion of deaths and births.]

42. Accordingly MANU likewise has said, when treating of uncleanness by reason of mourning &c. "The relation of *sapindas* ceases with the seventh person [in ascent or descent ;] and that of *samanodacas* ends only where birth and family name are no longer known." Else this passage would be in contradiction to the text before cited : "To three must libations of water be made &c." (§ 39.)

43. But on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,] succeeds to the estate in their default. Thus VYASA says, "After the death of her husband, let a virtuous woman observe strictly the duty of continence ; and let her daily, after the purification of the bath present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and especially the adoration of VISHNU, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman, who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss.]"

44. Since by these and other passages it is declared, that the wife rescues her husband from hell ; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror :] for they share the fruits of virtue and of vice ; therefore the wealth devolving on her is for the benefit of the former owner ; and the wife's succession is consequently proper.

45. Hence [since the wife's right or succession is founded on reason,] the construction in the text of SANKHA &c (§ 15) must be arranged by connexion of remote terms, in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent] wife take, or, in her default, let the parents take it : on failure of them, it goes to the brothers.' The terms "if there be none [that is, if there be no wife]," which occur in the middle of the text, (§ 15) are connected both with the preceding sentence "it goes to his brothers," and with the subsequent one "his

father and mother take it." For the text agrees [with passages of VISHNU and YAJNYAWALKYA, § 4 and 5, which declare the wife's right; and the reasonableness of this has been already shown (§ 43).

46. The assumption of any reference to the condition of the brethren as unseparated or as reunited, not specified in the text, is inadmissible [being burdensome and unnecessary.] Therefore the doctrine of JIENDRIYA, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his coheirs, or united with them, (for no such distinction is specified,) should be respected.

47. The rank of wife belongs in the first place to a woman of the highest tribe. for the text [of SANKHA &c] expresses, that "the eldest wife takes the wealth" (§ 15 & 45,) and seniority is reckoned in the order of the tribes. Thus MANU says, "When regenerate men take wives both of their own class and others, the precedence, honour, and habitation of those wives must be settled according to the order of their classes." Therefore [since seniority is by tribe,] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife (*patni*) belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly MANU says, "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorably considered as a mere *Chandala* begotten on a *Brahmani*." But, on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties] Thus VISHNU ordains, "If there be no wife belonging to the same tribe, [he may execute the business relating to acts of religion] with one of the tribe immediately following, in case of distress. But a regenerate man must not do so with a woman of the *Sudra* class." 'Execute business relating to acts of religion,' is understood from the preceding sentence. Therefore a *Brahmani* is lawful wife (*patni*) of a *Brahmana*. On failure of such, a *Kshatriyâ* may be so, in case of distress; but not a *Vaisya*, nor a *Sudrâ*, though married to him. A *Kshatriya* woman is wife of a *Kshatriya* man. In her default, a *Vaisya* woman may be so, as belonging to the next following tribe; but not a *Sudra* woman. A *Vaisya* is the only wife for a *Vaisya*: since a *Sudra* wife is denied in respect of the regenerate tribes simply.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since woman actually espoused may not have the rank of

wives, the following passage of NARADA intends such a case. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance." So [this other passage] of the same author; ["On failure of heirs, the property goes to the king,] except the wealth of a *Brahmana*. But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared." The allotment of a maintenance to the women of such persons, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepancy.

49. Accordingly, VRIHASPATI propounds the king's right to an escheat in default of the wife: "If men of the military, commercial and servile tribes die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all." But NARADA, directing, that he should give a maintenance to the women of such persons," (§ 48) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused women. Accordingly, in passages declaratory of the wife's right of succession, the term "wife" (*patni*) is employed: and, in those which ordain a maintenance, the terms "woman" (*stri* or *nāri*) or "spouse" (*bharya*) or other similar word.

50. In the text of DEVALA, (§ 17.) which expresses, "Next let brothers of the whole blood divide the heritage of him, who leaves no male issue; or daughters equal [as appertaining to the same tribe;] or let the father, if he survive, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order; but, on failure of all these, the nearest of the kinsmen succeed;" where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same tribe" intend those of the half blood; for whole brothers are specified under the appropriate term, and the distinction would be impertinent [as not excluding any one; or as superfluous, since whole brothers of course belong to the same tribe;] in this text, we say the order in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts VISHNU and the rest [as VRIHASPATI and YAJÑAWALKYA]: but the meaning of the text is, that the heirs shall take the succession in the order declared by VISHNU and others. To mark uncertainty in the specified order, the author has twice used the word "or"; once in the phrase "or daughters," and again in the sentence "or let the father &c." and the word is also understood in other places. Thus DEVALA

has himself shown vagueness in his own enumeration, intimating that 'either brothers, or daughters, or parents &c. [take the succession].

51. As for what has been said by BALOCA, concerning the text of SANKHA and the rest (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the widow to be young, or is relative to brethren unseparated or reunited ; that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law for the doubt remain [which of the three is intended ;] and neither rule could be followed in practice.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine that must be rejected as intending a favour to the matrons ; for, the scope of the precepts, which allot a maintenance to women, has been already shown.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe, how is the contradiction [of the text to passages of VIŚHNU and YAJNYAWALKYA § 4 and 5] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms ?] If it be by distinguishing the cases of reunion and continued separation, the same distinction may pervade the whole subject : and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another tribe ? But the proposed distinction, founded on reunion and separation, [§ 19] has been already fully refuted by us [§ 30.]

54. The distinction regarding the whole and the half blood is contradicted by VRIHASPATI, who says "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren be present. Uterine brethren are brothers by the same mother [and of course of the whole blood.] The author declares the wife's right of succession, although such persons exist. By the term "his share," is understood the entire share appertaining to her husband ; not a part of it only [sufficient for her support]

55. Therefore the interpretation of the law is right as set forth by us.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage or sale of it. Thus CATYAYANA says. Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it.

57. Abiding with her venerable protector, that is with her

father-in-law or others of her husband's family, let her enjoy her husband's estate during her life ; and not as with her separate property, make a gift, mortgage or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate ; not the kinsmen [or *sapindas* :] since these, being inferior to the daughter and the rest, ought not to exclude those heirs ; for the widow debars them of the succession ; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Nor shall the heirs of the woman's separate property [as her brothers &c.] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs :] for the right of those [persons, whose succession is declared under that head, C 4.] is relative to the property of a woman [other than that which is inherited by her.] CARAYANA has propounded by separate texts the heirs of a woman's property ; and his text, declaratory of the succession to heritage,] would be tautology : [consequently heritage is not ranked with woman's peculiar property.]

59. Therefore those persons, who are exhibited in a passage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow dies, or when her right ceases,] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased [by the oblations presented by them] than other claimants [such as the *sapindas* above-mentioned, § 37.]

60. Thus in the *Mahabharata*, in the chapter entitled *Dana-dharma*, it is said "For women, the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husband's wealth."

61. Even use should not be by wearing delicate apparel and similar luxuries . but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner [since the benefit of the husband is to be consulted,] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste." Here "waste" intends expenditure not useful to the owner of the property.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property ; or, if still unable, she may sell or otherwise alien it : for the same reason is equally applicable.

63. Let her give to the paternal uncles and other relatives of her husband presents in proportion to the wealth, at her husband's

funeral rites. VRIHASPATI directs it, saying "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family." The term "paternal uncle" intends any *sapinda* of her husband; "daughter's sons," the descendants of her husband's daughter; "children of his sister," the progeny of her husband's sisters's son, "maternal uncles," her husband's mother's family. To these and to the rest, let her give presents and not to the family of her own father, while such persons are forthcoming for the specific mention of paternal uncles and the rest would be superfluous.

64 With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus NARADA says, "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*." In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

65 In like manner, if the succession have devolved on a daughter, those persons, who would have been heirs of her father's property in her default, [as her son, her paternal grandfather &c.] take the succession on her death, not the heirs of the daughter's property [as her daughter's son &c.]

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment, much more should the wife, or any other successor, give a like portion.

67. Thus has the widow's right of succession been explained.

SECTION II.

On the right of the Daughter and Daughter's Son.

1. The daughter's right of succession on failure of the wife [is declared.] On that subject MANU and NARADA say. "The son of a man is even as himself, and the daughter is equal to the son how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself?" NARADA particularizes the daughter [as inheriting in right of her continuing the line of succession:] "On failure of male issue, the daughter inherits, for she is

equally a cause of perpetuating the race ; since both the son and daughter are the means of prolonging the father's line." The author states the circumstance of her continuing the line as a reason of the daughter's succession : And the line of descendants here intends such descendants as present funeral oblations ; for one, who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son ; nor the daughter's daughter : for the funeral oblation ceases with him.

3. Therefore the doctrine should be respected, which DICSHITA maintains ; namely that a daughter, who is mother of male issue or who is likely to become so, is competent to inherit ; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed.] Accordingly PARASARA says, "Let a maiden daughter take the heritage of one who dies leaving no male issue ; or if there be no such daughter, a married one shall inherit." In the term "married" is here implied the restriction before-mentioned [excluding one who fails in bringing male issue.]

5. Thus DEVALA says, "To maidens should be given a nuptial portion out of the father's estate. But of him, who leaves no appointed daughter, [nor son,] the unmarried daughter belonging to his own tribe, and legitimate, shall take the inheritance, like a son." The term "appointed daughter" implies also son. "His own ;" belonging to the same tribe with himself. "Legitimate ;" his own lawful issue.

6. This is proper : for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus VASISHTHA says, "So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother ; this is a maxim of the law." So PAITHINASI : "A damsel should be given in marriage, before her breasts swell. But, if she have menstruated [before marriage,] both the giver and the taker fall to the abyss of hell ; and her father, grandfather and great-grandfather are born [insects] in ordure Therefore she should be given in marriage while she is yet a girl."

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage ; and, being accordingly married, she confers benefits on her father by means of her son ; the wealth devolving on her is for the benefit of the [former] owner ; and it is reasonable, therefore, that the pro-

perty should descend to the unmarried daughter, on failure of the wife.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by VRIHASPATI: "Being of equal class and married to a man of the like tribe, and being virtuous and devoted to obedience, she [namely the daughter,] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son [nor wife]"

9. Of equal class.] Belonging to the same tribe with her father. Married to a man of like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

10. The son of a daughter appointed to continue the male line is, like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession. But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest [viz. the son's son and grandson's son, and the widow;] and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. It must not be alleged, that, admitting this doctrine of [benefits conferred being the cause of a right of succession,] the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, then a daughter who may have issue. For her son, born subsequently might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. By specifying "obedience" to her husband (§ 8.), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue. *

13. In the text before cited (§ 8.), the pronoun refers to the word "daughter" contained in a preceeding passage [which will be forthwith quoted. § 14.] Thus, by the conditions specified, that she be "of equal class" and "married to a man of like tribe" &c. (§ 8), the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

14. "As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the demise of her father should she bear no male issue in consequence of her proving barren or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus SANKHA and LIKHITA say, "The husband is not entitled to the wealth of his wife being an appointed daughter, if she die leaving no issue." So PATHINASI: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, [her husband's] claim [as her heir] is precluded.

16. But the following passage of MANU must be understood to be applicable, on the demise of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."

17. VRIHASPATI recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson]. "As the ownership of her father's wealth devolves on her, although kindred exist; so her son likewise is acknowledged to be the heir to his maternal grandfather's estate." As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

18. Nor does this text (§ 17) relate to the son of an appointed daughter: for the pronoun "he," in both the phrases ("devolves on her," and "her son is acknowledged,") bears reference to the "daughter whether appointed or not appointed," who was mentioned in the preceding passage (§ 8.) Or upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

19. Accordingly MANU propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son. else he would have specified this cause. "Let the daughter's

son take the whole estate of his own father who leaves no [other] son ; and let him offer two funeral oblations ; one to his own father, and the other to his maternal grandfather. Between a son's son and the son of a daughter, there is no difference in law ; since their father and mother both sprung from the body of the same man."

20. Thus this very author expressly declares, that the daughter's son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class ; the maternal grandfather becomes in law the father of a son : let that son give the funeral oblation and possess the inheritance."

21. Besides the term 'daughter's son' is in law restricted to signify the male offspring of an appointed daughter. BAUDHAYANA intimates that, when he says "[Consider as] another [son] the daughter's son termed son of an appointed daughter, being born of the female issue after an express stipulation." Here 'consider' is understood.

22. Hence also [since such is the scope and purport of the text ; § 17] BHOJADEVA has cited that passage of VRIHASPATI under the head of succession of a daughter appointed or unappointed.

23. But GOVINDA-RAJA, in his commentary on MANU, states the claim of the daughter's son as preferable to that of the married daughter, on the grounds of the following passage of VISHNU. "If one die leaving neither son nor grandson, the daughter's son shall inherit the estate ; for, by consent of all, the son's son and the daughter's son are alike in respect of the celebration of obseques."

24. This does not appear to us satisfactory : for it contradicts the text above cited (§ 8.)

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter's son notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to hers, (§ 17) and more expressly from the purport of the term "likewise" in the phrase "her son likewise is acknowledged to be her," (§ 17) that his pretensions are inferior to hers. Therefore it is a right deduction, that the succession of the daughter's son is next after the daughter.

26. By the words "although kindred exist," (§ 17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son is hinted as taking place when no such impediment exists. Accordingly VRIHASPATI, immediately after [the passage above cited, § 17] says "On failure of those persons, the brothers and nephews of the whole blood are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests." Hence the word "those" bears reference to the daughter's son [named in the text,] and to the parents

indicated [by the kindred.] Therefore, it is on failure of those persons, that the succession of brothers and the rest takes place.

27. As for the assestion of BALOCA, that the daughter's son inherits after the whole series of heirs specified in the passage of [YAJNYAWALKYA] above cited, "The wife, daughters also," &c. (Sect. 1 § 4) that is mere childish prattle ; for it contradicts the text of VRIHASPATI (§ 17). Nor is there any thing inconsistent with that enumeration of heirs, for the maiden daughter, married daughter, and daughter's son, are all signified by the term "daughters" in the plural number (Sect. 1 § 4). As the word "son," in the phrase "who departed for heaven leaving no son," intends male issue down to the great-grandson, since he is equally a giver of funeral oblations ; so does the term "daughter" comprehend the daughter's son, for he also is the giver of a funeral offering ; or as the term "male issue," in the sentence "on failure of male issue, the daughter inherits" (§ 1), intends the widow also. Else the plural number, in the word "daughter," would be unmeaning ; and the author would have used the singular number as in the words "the wife," "the son of a brother" &c. We shall hereafter [in the course of expounding passages concerning the reunion of parceners] explain the intention of the plural number in the word "brothers" (Sect. 1. § 4.)

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne ; and consequently the succession could never take place.

29. Therefore the succession of the daughters' son on failure of daughters, as affirmed by VISWARUPA, JITENDRIYA, BHOJADEVA and GOVINDA-RAJA, should be respected.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die [without bearing issue,] the estate which was hers, becomes the property of these parents, a married daughter or others, who would regularly succeed if there were no such [unmarried daughter] in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs : for that [text, which is declaratory of the right of the husband and the rest,] is relative to a woman's peculiar property. Since it has been shown by a text before cited (Sect. 1. § 56), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely the daughters and the rest, succeed to the wealth ; therefore the same rule (concerning the succession of the former possessor's next heirs) is inferred a fortiori, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. Or the word "wife" [in the text above quoted, Sect. 1. § 56] is employed with a general import : and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

2. Thus has the succession of the daughter and daughter's son been explained.

SECTION III.

On the Father's right of Succession.

1. If there be no daughter's son, the succession devolves on the father ; and not on the mother [before the father] ; nor at once on both parents. For that is contrary to VISHNU'S text "If there be none, it belongs to the father , if he be dead, it appertains to the mother."

2. But the following passage of MANU, as well as that of VRIHASPATI, must be understood as relating to a case of failure of heirs own to the father inclusively. "Of a son dying childless [and having no widow] the mother shall take the estate ; and, the mother also being dead, the father's mother shall take the heritage." "Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress : or, by her consent, the brother may inherit."

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother ; for the father, offering two oblations of food to other manes, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other manes in which the deceased participates . he is preferable to the mother and the rest because he presents [personally] to others two oblations in which the deceased participates ; and his superiority is indicated in a passage of MANU : "In a comparison of the male with the female sex, the male is pronounced superior."

4. In the term *pitarau* ' both parents' (Sect. 1. § 4), the priority of the father is indicated : for the father is first suggested by the radical term *pitrī* ; and afterwards the mother is inferred from the dual number, by assuming, that one term [of two which compose the phrase] is retained.

5. Hence [since the members of the series are presented to the understanding in the order here stated], the argument, that 'the mental apprehension of a series being coextensive with the oral recital of its component members, recital, being waiting, necessarily precludes

apprehension, must be rejected as inconclusive ; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated ; § 4] and [the joint succession of father and mother] would contradict the text of VISHNU.

§. Thus the father's right of succession has been explained.

SECTION IV.

On the Mother's right of Succession.

1. If the father, be not living, the succession devolves on the mother : for immediately after propounding the father's right to the estate, VISHNU's text declares, "If he be dead, it appertains to the mother."

2. This too is reasonable ; for her claim properly precedes that of the brothers and the rest ; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy ; and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father ; since it is said "Of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father ;" and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father [and before the brothers.]

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grandmother's succession likewise takes place after the grandfather and before the grandfather's offspring. For otherwise [if a different order of succession be assumed : or if that order be not established ; or that indication be not acknowledged ;] there is a contradiction between the specified order of succession, "both parents, brothers likewise &c." [and this case which is perfectly analogous.] Accordingly [since the grandmother's right of succession is in this manner indicated by YAJÑAWALKYA.] MANU says, "And the mother also being dead, the father's mother shall take the heritage." The meaning is 'being dead, that is, deceased, together with her offspring.'

5. Here the particle "and," as well as "also," must be joined

in construction with both parts of the sentence. Therefore the sense is 'and the mother being dead, the paternal grandmother also may take the heritage.' What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also."

6. The meaning then of the text [of YAJNYAWALKYA] is this : the succession of both parents takes effect, in the order which has been explained, after the descendants of the deceased down to his daughter's son, and before [the father's] own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately propounded in the text of YAJNYAWALKYA ; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession.

7. Thus the mother's right of inheritance has been explained.

SECTION V.

On the Brother's right of Succession.

1. If the mother be dead, the property devolves on the brother ; for VISHNU, having declared, that, "If the father be dead, it appertains to the mother," proceeds to say "On failure of her, it goes to the brothers : " and here the pronoun refers to the mother. It appears also from the passage [of YAJNYAWALKYA] "both parents, brothers likewise," that the brother's succession takes place in the case of the death of both parents.

2. It must not be alleged, that, under the passage above cited, which expresses "brothers likewise and their sons," the brother's son, being declared heir in like manner as the brothers are, shall inherit also next to the mother. "For the text of VISHNU, declaring that "it goes to the brothers," adds 'After them, it descends to the brother's sons : " and in this place the pronoun refers to the brothers.

3. That too is reasonable : for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates ; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer ; and he is therefore superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother ; and his succession, therefore, very properly takes effect after her.

4. Besides why may not the word "likewise" be connected with the term "brother ?" and thus the parents and brothers may have an

equal right of succession ; the text being interpreted 'as parents, so do brothers inherit.'

5. The question, then, must be negated, as at variance with the text of VISHNU : and the same is to be done in the other instance likewise [of the claims of brother and brother's son.] So MANU declares, that brothers take the inheritance, not the nephew. "Of him, who leaves no son, the father shall take the inheritance ; or the brothers."

6. Moreover, why has not the nephew, whose father is living, a right of succession ? There is no other reason but this - that one, whose father is living, does not confer benefits, since he is incompetent to offer oblation. If then it be thus settled, [that the order of succession is regulated by the degree in which benefits are conferred,] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits ? Accordingly DEVALA, in a passage before cited [Sect. 1 § 17,] not specifying the brother's son in the series of heirs down to the half brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half brother.

7. The passage, which pronounces a nephew to be as a son, ["They are all fathers by means of that son ;"] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together ;] for that contradicts the text [of VISHNU] above cited. Else why should not [his right of succession] be before the brothers.

8. Therefore the brother alone is heir in the first instance.

9. Here again, a brother of the whole blood has the first title ; under the following text [§ 10] : and, even under the general rule for the brother's succession ("Brothers also" Sect. 1. § 4). The meaning is, that the whole brother shall inherit in the first place : but if there be none, then the half brother ; for he also is signified by the word brother, being issue of the same father.

10. The passage alluded to (§ 9) is as follows : "A reunited [brother] shall keep the share of his reunited [coher,] who is deceased ; or shall deliver it to [a son subsequently] born. But an uterine brother [shall thus retain or deliver the allotment] of his uterine relation." This text of YAJNYAWALKYA also shows, that the term brother is applicable both to the whole and to the half blood. Else, if it intended only the uterine [and of course whole] brother, the author would not have specified, that "the uterine brother, should retain or deliver the allotment of his uterine relation : " for the whole blood would be signified by the single term "brother."

11. Therefore the succession of brothers, whether of the whole or of the half blood, is declared by the passage before cited ("Both parents, brothers likewise" Sect. 1. * 4). But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother is intimated.

12. The succession of the half brother, between [the whole brother and the brother's son,] as affirmed by ŚRICARA and VIŚVĀRUPA should be acknowledged; for he is inferior to the whole brother who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates; while the half brother only presents three oblations in which the deceased participates. and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. In answer to the enquiry whether the half brother, though reunited in coparcenary, be inferior or not to the whole brother, YĀJNYĀVALKYA says, "A half brother, being again associated, may take the succession; not a half brother, though not reunited but one united [by blood, though not by coparcenary,] may obtain the property; and not [exclusively] the son of a different mother."

14. The meaning of the text is this: 'A brother by a different mother, but associated again in coparcenary, shall first take the inheritance; not generally any half brother [whether associated or separated].' The latter part of the text is in answer to the question, whether inheriting first, he excludes the whole brother or takes the succession jointly with him? 'the whole brother, though not reunited in parcenary, shall take the heritage,' (here the word whole brother is understood from the preceding sentence.) 'not exclusively the son of a different mother, though reunited' Or the term "united" may signify whole brothers (or united by blood) Accordingly the text is so read in the citation of it by JITENDRIYA as a passage of *Ṛiddha* YĀJNYĀVALKYA: and in that case, the term "associated" is understood from the preceding sentence.

15. Therefore the half brother, who is again associated in coparcenary shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the meaning; and consequently the whole brother, who is not reunited in parcenary, and the half brother, who is associated, should divide the succession. Accordingly the author has employed the particle "but" [with the connective sense].

16. An objection is stated by ŚRICARA MIŚRA. The maxim, that "the reunited brother shall keep the share of his reunited coheir," (§ 11.) is independent [of other precepts,] § as it applies to the case of reunited half brothers exclusively; and, in like manner, the maxim that "the uterine [meaning the whole] brother retains the allotment

of his uterine relation," (§ 10 bears) no reference [to any other rule,] when it is applicable to the case of unassociated whole brothers only : but, when there is a half brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim ; for this argues variableness in the precept. Thus it is shown [by JAMINI,] in the disquisition on the passage *dwayoh pranyayanti*, that the prohibition, relatively to two sacrifices, of the use of the *uttaraveda* or northern altar directed generally for the four sacrifices [in which those two are comprehended,] is not a prohibition [but an exception] ; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. So, in regard to the subject under consideration, the maxims, that "the reunited brother shall keep the shares of his reunited coheir," and that "the uterine (or whole) brother shall retain the allotment of his uterine relation," (§ 10.) are applicable in those cases in which the rules are operative independently of any other : but, if there be a half brother associated and a whole brother unassociated, the two rules are not applicable in this instance ; and it would follow, that no one could take the estate [since there is no special provision in the law for this case.] Therefore [the true interpretation is, that, in the case stated,] where the associated half brother might be supposed to be heir of his associated parcener, under the rule, that "a reunited brother shall keep the share of his reunited coheir," the maxim that "the uterine (or whole) brother shall retain the allotment of his uterine relation," serves as an exception to that rule. Thus the half brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then how does the succession go ? The whole brother, whether reunited or not reunited in coparcenary, inherits the property.

17. That is not congruent : for it is not true, that there is variableness in a precept, merely because two [rules], which are severally applicable to two [cases], become applicable in a single instance at the same time.

18. Thus in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of *Udgatri* or the one performing the office of *Pratistatry*, singly stumble [in passing from the one apartment to the other, at the celebration of the sacrifice called *Jyotishtoma* :] but, if both those priests should stumble at the same time, neither injunction would be applicable ; for that would be a variableness in the precept.

19. In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated *Chaturhotra* at the full moon, and with the prayer termed *Panchahatra* at the new moon an oblation of curds consecrated to INDRA is understood in the sacrifice named *Upansu-yaga*, and an offering of milk consecrated to INDRA is similarly understood at the *Agnishomya* sacrifice; and both precepts being thus severally applicable in those instances, neither of them would take effect at the *Agneya* sacrifice, since there would be variableness in the precept if both were applied to this case.

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one] with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16), the prohibition bears reference to the injunction concerning the altar, expressed in these words "at this sacrifice prepare the *uttaravedi*." Without opposition to that [injunction], it would be no precept. Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition [as well as the injunction,] would be useless; since without the prohibition [and injunction,] the omission of the altar might be deduced [from the silence of the law]. Therefore even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variableness in the precept; and an alternative must be inferred. But, in the case of any thing supposed as a matter of spontaneous option, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

21. Accordingly [since there is a variableness in the precept, when a general and a particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so; or since a prohibition, which is constant, is inferrible without the aid of either injunction or prohibition;] the passages, which direct, that the *Shodasin* shall be taken, and that it shall not be taken, [at an *Atiratra* sacrifice,] constitute an alternative.

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning; namely that, since a prohibition implies a previous supposition [to the contrary,] the [negative] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice; for example, the passage which expresses "The priest makes not two [portions of an oblation of liquid butter] when a victim is offered; [nor at the sacrifice with acid asclepias ."] and other similar passages.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition [which is necessary to constitute an alternative ?] for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause ; it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency.

24. But they affirm, that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of any thing deduced from a precept. That is an assertion which argues extreme ignorance : for it would follow, that an alternative does not exist : since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

25. Therefore, [since the opposite opinion is erroneous,] an alternative is inferred [not in the manner there proposed, but] according to the reasoning set forth by us [viz. that, if the prohibition be constant, both injunction and prohibition would be unnecessary ; and, if the injunction were invariably cogent, the prohibition would be vain] But let that be ; for why expatiate ?

26. As for the remark of the same author, who says, (§ 16) that 'if there be a half brother associated and a whole brother unassociated, in which case the half brother might be supposed to be the heir under the rule, that "a reunited brother shall keep the share of his reunited coheirs ;" (§ 10) then the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," (§ 10) serve as an exception to that rule.' That is unsuitable, for, in this very case, the rule concerning the reunited coheir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir : since there is not in this instance any ground of preference.

27. But this author's interpretation of the text "A half brother being again associated &c. (§ 13), as explanatory of the passage "a reunited brother shall keep the share of his reunited coheir," is quite wrong : for the intended purport being conveyed by that text, the passage in question would become superfluous.

28. Moreover the exposition of the text (by ŚRICĀRA §), as signifying 'Let not the half brother, who is an associated half brother, take the estate ; but the whole brother, (this term is understood,) who is not reunited, shall positively take it ; a son of a different mother, though united, shall not inherit ;' is also erroneous, for the same term 'half brother' in the first part of the text, is needlessly repeated ; and

the phrase 'son of a different mother,' in the later part of it, becomes superfluous : and the particle *api* is taken in the sense of positively.

29. Besides, under the interpretation of the passage concerning the uterine [or whole] brother as an exception to the claim of the associated half brother if a whole brother unassociated exist ; and its consequent inapplicableness to the case of a whole brother and half brother both unassociated ; these would have an equal right of succession [under the general maxim, that brothers shall inherit ; [Section I § 4 since no distinction is specified .] or else the property would belong to neither of them if the general rule be explained by the particular one.

30. But, if the passage concerning the uterine (or whole) brother be applicable to this case also, (taking the term "uterine" as intending such a brother generally, whether associated or unassociated, §) then the objection of variableness in the precept may be retorted on you ; for the passage, concerning the reunited brother, bears reference to opposition in one case, (in that of the associated half brother and unassociated whole brother ;) and bears no reference to opposition in another case, (in that of a whole brother and half brother both unassociated .) in like manner as it is declared, that the general rule for preparing the *vedi* or altar at a sacrifice with the *Soma* plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed ; since there would be variableness in the precept, if it operate in the case of the *dicsuhiya* and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule (concerning sacrifices celebrated at the full moon,) but in other instances operate without bar to any thing else.

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by SRICARA . for the passages concerning the reunited brother and the uterine (or whole) brother (§ 10) are relative severally to different cases ; and that regarding "a half brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half brother associated. Thus the meaning of the first part of that text is, 'a half brother, being reunited in coparcenary, shall take the succession, although a whole brother not reunited exist ; but a half brother, who is not reunited, shall not inherit' The latter part of the text is in answer to the question, does not the whole brother inherit in that case ? Though not reunited, the whole brother (this term is understood) shall take the heritage , and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated.

32. So MANU likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."

33. Reciprocation being indicated by the plural number, in the term "uterine brothers," as respecting these exclusively ; and in the words "brothers reunited," as relating to the half brothers ; the words 'assemble together' are properly employed to mark association of both (descriptions of brethren ;) for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together.] because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and," in the phrase "and such brothers as were reunited &c." and the rule (of grammar) expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted ; the assertion, that reciprocation is not expressed by the text, would imply, that even the conjunction does not bear that sense (viz. the sense of reciprocation.)

34. Therefore, if whole brothers and half brothers only (not reunited brothers of either description) be the claimants, the succession devolves exclusively on the whole brothers. Accordingly *Vrihat MANU* says, "If a son of the same mother survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immovable estate. But, on failure of him, (the half brother) may take the heritage."

35. This rule shall hold good in regard to the immoveable estate. This rule is relative to divided immoveables. For, immediately after treating of such (property,) *YAMA* says, "The whole of the undivided immoveable estate appertains to all the brethren ; but divided immoveables must on no account be taken by the half brother."

36. All the brethren.) Whether of the whole blood or of the half blood. But, among whole brothers, if one be reunited after separation, the estate belongs to him. If an unassociated whole brother and reunited half brother exist, it devolves on both of them. If there be only half brothers, the property of the deceased must be assigned in the first instance to a reunited one ; but, if there be none such, then to the half brother who is not reunited

37. Accordingly the plural number is employed in the term "brothers," (Sect. 1. § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmeaning.

38. The text, "a reunited (brother) shall keep the share of his reunited coheir," (§ 10) is intended to provide a special rule governed by the circumstance of reunion after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood or brothers of the half blood, or sons of such brothers, or uncles, or the like, the reunited parcener shall take the heritage : for the text does not specify the

particular relation ; and all (these relations) were premised in the preceding text (Sect. 1. § 4) ; and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

40. Thus the brother's right of succession has been explained.

SECTION VI.

On the Nephew's right of succession and that of other heirs.

1. On failure of brothers, the brother's son is heir : for the text, of VISHNU, having declared "it goes to the brothers," proceeds "After them it descends to the brother's sons."

2. (Among these, the succession devolves first on the son of a uterine (or whole) brother ; but, if there be none, it passes to the son of the half brother. For the text expresses "An uterine (brother) shall retain or deliver the allotment of his uterine relation" (Sect. 5 § 10). Indeed the son of the half brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother (who is a giver of oblations to the grandfather in conjunction with the mother of the deceased.)

3. Nor can it be pretended that the step-mother, grandmother and great-grandmother take their places at the funeral repast, in consequence of [ancestors being deified] with their wives : for the terms "mother" [grandmother and great-grandmother,] &c. [in such texts as the following] bear their original sense of his own natural mother, father's natural mother ; and 'grandfather's natural mother ;' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, "A mother tastes with her husband the funeral repast consisting of oblations to the manes ; and the paternal grandmother with her husband and the paternal great grandmother with "her's." But the introduction of step-mothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares, "Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodical obsequies."

4. Besides, the command for the celebration of the funeral repast in honour of ancestors with their wives, is of invariable exigency ; as it is universally acknowledged : but, since there are not step-mothers in every instance, the precept must relate to the natural mother : for the association of the variable and invariable exigency of the same command would be a contradiction

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two

ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great-grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

6. Accordingly [since superior benefits are conferred by such a successor,] the brother's grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner's father who is the person principally considered.

7. But the brother's great-grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus MANU says, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings: but the fifth has no concern with them." By this passage the fifth in descent is debarred.

8. But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle;] in like manner as it descends to the owner's daughter's son [on failure of the male issue, in preference to the brother.]

9. The succession of the grandfather's and great-grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text "for even the son of a daughter delivers him in the next world, like the son of a son," is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake.

10. Accordingly MANU has not separately propounded their right of inheritance: for they are comprehended under the two passages "To three must libations of water be made &c." and "To the nearest kinsman (*sapinda*) the inheritance next belongs" YADNYAWALKYA likewise uses the term "gentiles" or kinsmen (*gotraja*) for the purpose of indicating the right of inheritance of the father's or grandfather's daughter's son, as sprung from the same line, in the relative order of the funeral oblation; and for the further purpose of excluding females related as *sapindas*, since these also sprung from the same line.

11. Accordingly [since they are excluded,] BAUDHAYANA, after premising "A woman is entitled," proceeds "not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit." The construction of this passage is 'a woman is not entitled to heritage.' But the succession of the widow

and certain others [viz. the daughter, the mother and the paternal grandmother,] takes effect under express texts, without any contradiction to this maxim.

12. On failure of any lineal descendant of the paternal grandfather, down to the daughter's son, who might present oblations in which the deceased would participate ; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, *YAJÑYAWALKYA* employs the term "cognates" (*bandhu*.) But *MANU* has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest for it is by means of wealth, that a person becomes a giver of oblation. Two motives are indeed declared for the acquisition of wealth : one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly *VRIHASPATI* says, "Of property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six monthly and annual obsequies." So *APASTAMBA* ordains, "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased." By saying "to defray the charges of his monthly, &c obsequies" his participation, and by directing "religious purposes" his spiritual benefit, are stated as reasons. Accordingly the sage says, "Wealth is useful for alms and for enjoyment." It is reasonable, therefore, that, on failure of kindred who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he was bound to offer.

14. Accordingly [since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was bound to offer ; *MANU*, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made &c" "To the nearest kinsman the inheritance next belongs," (vide § 7 & 17) proceeds thus, "Then on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil."

15. The distant kinsman (*saculya*) is the descendant of the paternal grandfather's grandfather or other remote ancestor. Such relatives are denominated *Samanodacas*. Their order of succession is in the series as exhibited. On failure of such heirs [down to the

Samanodaca] the succession devolves on the spiritual preceptor, the pupil &c.

16. Otherwise [if the text of MANU do not intend the maternal uncle and the rest,] how is the admission of maternal uncles and others affirmed without contradiction to MANU ? Therefore this meaning is intended by him in the passage above cited ; and there is no contradiction.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made ; to three must oblations of food be presented ; the fourth in descent is the giver of those offerings ; but the fifth has no concern with them ;" he adds "To the nearest kinsman (*sapinda*) the inheritance next belongs," for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of *sapinda* has been declared by a distinct text, ("Now the relation of *sapinda* or men connected by the funeral cake, ceases with the seventh person ;" §) and the right of the fourth in descent to inherit is declared by the text "To the nearest kinsman the inheritance next belongs ;" the passage, which begins "To three must libations be made &c," would be superfluous. It cannot be said, that it is intended to direct the celebration of the funeral repast in honour of three ancestors : for it is inserted in the midst of a disquisition concerning inheritance ; and the funeral repast is ordained by a different text. Thus MANU says, "Let the householders honour the sages by duly studying the *Veda* ; the gods by oblations to fire as ordained by law ; the manes, by pious obsequies ; men, by supplying them with food ; and spirits, by gifts to all animated creatures."

18. Nor should it be pretended, that the text [of MANU, "To the nearest *sapinda* &c." § 17] is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings : for the order of both is not suggested by the text. But MANU, declaring, the oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by] presentation of oblations.

19. Therefore a kinsman, who is allied by a common oblation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir :] and the

text ("To three must libations of water be made" &c. § 7) is intended to propound the succession of such kinsmen ; and the subsequent passage ("To the nearest *sapinda* &c" § 17) must be explained as meant to discriminate them according to their degrees of proximity.

20. The order of succession then must be understood in this manner : on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father &c.) which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others [namely his son or grandson] who offer oblations to the maternal grandfather and the rest which the deceased was bound to present.

21. But on failure of kin in this degree, the distant kinsman (*saculya*) is successor. For MANU says, "Then on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil." The distant kinsman (*saculya*) is one who shares a divided oblation (Sect. 1. § 37) as the grandson's grandson or other descendant within three degrees reckoned from him ; or as the offspring of the grandfather's grandfather or other remoter ancestor.

22. Among these claimants [whether ascending or descending], the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer. [These descendants are therefore heirs.] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue of oblations which the deceased was bound to offer.

23. If there be no such distant kindred, the *Sananodacas*, or kinsmen allied by a common libation of water, must be admitted to inherit, as being signified by the term *saculya* [conformably with BAUDHAYANA's explanation of it : Sect. (§ 37.)

24. On failure of these, the spiritual preceptor [or instructor in knowledge of the *Veda* §] is the successor. In default of him, the pupil (or student of the *Veda*) is heir. by the text of MANU, "or the spiritual preceptor or the pupil." (§ 14.) On failure of him likewise, the fellow student ; by the text (of YAJÑAWALOYA) "a pupil and a fellow student." (Sect. 1. § 4.)

25. In default of these claimants, persons bearing the same family name (*gotra*) are heirs. On failure of them, persons descended from the same patriarch are the successors. For the text of GAUTAMA expresses "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage (of a childless man ; or his widow shall partake.)"

26. On failure of all heirs as here specified, let the priests take the estate. Thus MANU says, "On failure of all those, the lawful

heirs are such *Brahmanas*, as have read three *Vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost." Virtue, which would be extinguished by the ample enjoyment (of its reward,) but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on *Brahmanas*, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. In default of them, the king shall take the wealth : excepting however, the property of a *Brahmana*. A failure of descendants from the same patriarch and of persons bearing the same family name as well as of *Brahmanas*, must be understood as occurring when there are none inhabiting the same village : else an escheat to the king could never happen.

28. If the right of the father's daughter's son, and of the maternal uncle and the rest, be not considered as intended by the text, "To three must libations of water be made, &c. (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference ; since they are indicated by YAJÑYAWALKYA under the terms "Gentiles and cognates" (Sect. I. § 4) Consequently it must be affirmed, that they have been indicated by MANU in this text (§ 7). Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29. Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit ;] the equal right of the son, the son's son and the son's grandson, is proper for their equal pretensions are declared in the text, "By a son a man conquers worlds," &c. (Sect 1 § 31) and in other similar passages. They equally present oblations to the deceased. Hence also the grandson and great-grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father ; the law providing, that oblations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living,] would have the same right of inheritance with those whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson, and great-grandson. Therefore it must be inferred, that the party in their right of inheritance arises from the equal benefits conferred by them.

30. In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order.

31. This doctrine, [that inheritance is deducible from reasoning and founded on services rendered,] must be admitted to have the assent of MANU and other sages. for there can be no other purpose of propounding, under the head of inheritance, the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a reason for the son's inheriting: ("By the eldest son a man is exonerated from debt to his ancestors; therefore that son is entitled to take the heritage" (Sect 1 § 32) redemption also is exhibited as a cause of succession to property. ("Even the son of a daughter delivers him in the next world like the son of a son,") and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors,] and the passage, "To three must libations of water be made, &c. (§ 7) would be unnecessary [if such were not the purpose,] and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an apposite rule as founded upon their rendering no services; [but not so as grounded on the mere letter of the law;] and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes; [as must be done upon any other supposition.] and it is reasonable, that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him

32. This doctrine, as illustrated by the irreproachable UDYOTI, should be respected by the wise.

33 If the learned be yet unsatisfied [with relying on reason for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of MANU, § 7 and 17] must be assumed. But let this be. What need is there of expatiating?

34. Excepting the property of a *Brahmana*, let the king take the wealth [on failure of heirs]. So MANU directs "The property of a *Brahmana* shall never be taken by the king. this is a fixed law. But the wealth of the other classes, on failure of all [heirs,] the king may take." By the term "all" is signified every heir including the *Brahmana* (§ 26).

35 The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus YAJÑAWALKYA says, "The heirs of a hermit, of an ascetic, and of a professed student, are in their order, the preceptor, the virtuous, pupil, and the spiritual brother and associate in holiness."

36. Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be

understood to be a professed one : for abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

MAHOMEDAN LAW.

AL SERAJIYYAH.

THE INTRODUCTION.

IN THE NAME OF THE MOST MERCIFUL GOD !

PRaise *be* to God, the Lord of *all* worlds ; the praise of those who give Him thanks ! And (*His*) blessing on the best of created beings, Muhammed, and his excellent family ! The Prophet of God, (on 'whom be His blessing and peace !') said .—" Learn the laws of inheritance, and teach them to the people , for they *are* one-half of useful knowledge." Our learned in the law (to whom God be merciful !) say :—" There belong to the property of a person deceased four successive duties (to be performed by the Magistrate .) first, his funeral ceremony and burial, without superfluity of expense, yet without deficiency ; next the discharge of his just debts from the whole of his remaining effects ; then the payment of his legacies out of a third of what remains after his debts *are* paid ; and lastly, the distribution of the residue among his successors, according to the Divine Book, to the Traditions, and to the assent of the Learned." They begin with the persons entitled to shares, who are such as have each a specific share allotted to them in the Book of Almighty God ; then they proceed to the residuary heirs by relation, and they are all such as take what remains of the inheritance, after those who are entitled to shares ; and, there be only residuaries, they take the whole property : next to residuaries for special cause, as the master of an enfranchised slave and his *male* residuary heirs. Then they return to those entitled to shares according to their respective rights of consanguinity ; then to the more distant kindred ; then to the successor by contract ; then to him who was acknowledged as a kinsman through another, so as not to prove his consanguinity, provided the deceased persisted in that acknowledgment even till he died ; then to the person, to whom the whole property was left by will ; and lastly to the public treasury.

ON IMPEDIMENTS TO SUCCESSION.

Impediments to succession *are* four ; I. Servitude, whether it be perfect or imperfect ; II. homicide, whether punishable by retaliation, or expiable ; III. difference of religion ; and IV. difference of country, either actual, as between an alien enemy and an alien tributary ; or qualified, as between a fugitive and a tributary, or between two fugitive enemies from two different states : now a state differs from another by having different forces and sovereigns, there being no community of protection between them.

ON THE DOCTRINE OF SHARES, AND THE PERSONS ENTITLED TO THEM.

The *furud* (*furuz*) of shares, appointed in the book of Almighty God, are six : a moiety, a quarter, and eighth, two-thirds, one-third, and a sixth, *some formed* by doubling, and *some* by halving. Now those entitled to these shares are twelve persons ; four males, who are the father and the true grandfather or other male ancestor, how high soever *in the paternal line*, the brother by the same mother, and the husband ; and eight females, who are the wife, and the daughter, and the son's daughter, or other female descendant, how low soever, the sister by one father and mother, the sister by the father's side, and the sister by the mother's side, the mother, and the true grandmother, that is, she who is related to the deceased without the intervention of a false grandmother. (A false male ancestor is, where a female ancestor intervenes in the line of ascent).

The father takes in three cases ; I. an absolute share, which is a sixth, and that with the son, or son's son, how low soever ; II. a legal share, and a residuary portion also, and that with a daughter, or a son's daughter, how low soever in the degree of descent ; III. he has a simple residuary title, on failure of children and son's children, or other low descendants. The true grandfather has the same interest with the father, except in four cases, which we will mention presently, if it please God ; but the grandfather is excluded by the father, *if he be living*, since the father is the means of consanguinity between the grandfather and the deceased. The mother's children also take in three cases : a sixth is the share of one only ; a third, of two, or of more : males and females have an equal division and right, but the mother's children are excluded by children of the deceased and by son's children, how low soever, as well as by the father and grandfather ; as the learned agree. The husband takes in two cases ; half, on failure of children, and son's children, and a fourth, with children or son's children, how low soever they descend.

ON WOMEN.

Wives take in two cases ; a fourth (goes) to one or more on failure of children, and son's children, how low soever ; and an eighth with children or son's children, in any degree of descend. Daughters begotten by the deceased take in three cases. half (goes) to one only, and two-thirds to two or more ; and, if there be a son, the male has the share of two females, and he makes them residuaries. The son's daughters are like the daughters begotten by the deceased ; and they may be in six cases ; half (goes) to one only, and two-thirds to two or more, on failure of daughters begotten by the deceased ; with a single daughter of the deceased, they have a sixth, completing (with the daughter's half) two-thirds, but, with two daughters of the deceased, they have no share of the inheritance, unless there be, in an equal degree with, or in a lower degree than, them, a boy, who makes them residuaries. As to the remainder between them, the male has the portion of two females ; and all of the son's daughters are excluded by the son himself. If a man leave there son's daughters, some of them in lower degrees

than others, and three daughters, of the son of another son, some of them in lower degrees than others, and three daughters of the son's son of another son, some of them in lower degrees than others, as in the following table, this is called the case of *tashbib*.

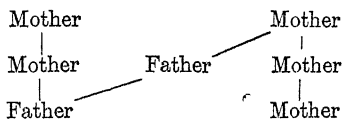
FIRST SET.	SECOND SET.	THIRD SET.
Son	Son	Son
Son, Daughter	Son	Son
Son, Daughter	Son, Daughter	Son
Son, Daughter	Son, Daughter	Son, Daughter
	Son, Daughter	Son, Daughter
		Son, Daughter

Here the eldest of the first line has none equal in degree with her ; the middle one of the first line is equalled in degree by the eldest of the second ; and the youngest of the first line is equalled by the middle one of the second, and by the eldest of the third line ; the youngest of the second line is equalled by the middle one of the third line, and the youngest of the third set has no equal in degree — When thou hast comprehended this, then we say the eldest of the first line has a moiety ; the middle one of the first line has a sixth together with her equal in degree to make up two-thirds ; and those in lower degrees never take anything, unless there be a son with them, who makes them residuaries, both her who is equal to him in degree, and her who is above him ; but who is not entitled to a share : those below him are excluded.

Sisters by the same father and mother may be in five cases : half (goes) to one alone ; two-thirds to two or more ; and, if there be brothers by the same father and mother, the male has the portion of two females ; and the females become residuaries through him by reason of their equality in the degree of relation to the deceased ; and they take the residue, when they are with daughters or with son's daughters, by the saying of Him, on whom be blessing and peace ! " Make sisters, with daughters, residuaries " Sisters by the same father only are like sisters by the same father and mother, and may in seven cases . half (goes) to one, and two-thirds to two or more on failure of sisters by the same father and mother ; and, with one sister by the same father and mother, they have a sixth, as the complement of two-thirds ; but they have no inheritance with two sisters by the same father and mother, unless there be with them a brother by the same father, who makes them residuaries ; and then the residue is distributed among them by the sacred rule " to the male what is equal to the share of two females." The sixth case is, where they are

residuaries with daughters or with son's daughters, as we have before stated *it*.

Brothers and sisters by the same father and mother, and by the same father only, are all excluded by the son and the son's son, in how low a degree soever, and by the father *also*, as it is agreed *among the learned*, and even by the grandfather according to *Abû Hanîfah*, on whom be the mercy of Almighty God ! And those of the half blood are also excluded by the brothers of the whole blood. The mother takes in three cases ; a sixth with a child, or a son's child, even in the lowest degree, or with two brothers and sisters or more, by whichever side they are related ; and a third of the whole on failure of those just mentioned ; and a third of the residue after the share of the husband or wife ; and this in two cases, either when there are the husband and both parents, or the wife and both parents : if there be a grandfather instead of a father, then the mother takes a third of the whole property, though not by the opinion of *Abû Yusuf*, on whom be God's mercy ! for he says, that in this case also she has only a third of the residue. The grandmother has a sixth, whether she be by the father or by the mother, whether alone or with more, if they be true grandmothers and equal in degree ; but they are all excluded by the mother, and the paternal female ancestors also by the father ; and, in like manner, by the grandfather, except the father's mother, even in the highest degree ; for she takes with the grandfather, since she is not *related* through him. The nearest grandmother, or *female ancestor*, on either side, excludes the more distant grandmother, on whichever side she be ; whether the nearer grandmother be entitled to a share of the inheritance, or be herself-excluded. When a grandmother has but one relation, as the father's mother's mother, and another has two such relations, or more, as the mother's mother's mother, who is also the father's father's mother, according to this table,



then a sixth is divided between them, according to *Abû Yusuf*, in moieties, respect being had to their persons ; but, according to *Muhammed*, (on whom be God's mercy !) in thirds, respect being had to the sides.

ON RESIDUARIES.

Residuaries by relation to the deceased are three : the residuaries in his own right, the residuary in another's right, and the residuary together with another. Now the residuary in his own right is every male, in whose line of relation to the deceased no female enters ; and of this sort there are four classes ; the offspring of the deceased, and

his root; and the offspring of his father and of his nearest grandfather, a preference being given, I mean a preference in the right of inheritance, according to proximity of degree. The offspring of the deceased are his sons *first*, then their sons, in how low a degree soever: then comes his root, or his father; then his paternal grandfather, and their paternal grandfathers, how high soever; then the offspring of his father, or his brothers; then their sons, how low soever; and then the offspring of his grandfather, or his uncles: then their sons, how low soever. Then the strength of consanguinity prevails. I mean, he, who has two relations is preferable to him, who has only one relation, whether it be male or female, according to the saying of Him, (on whom be peace!) "surely, kinsmen by the same father and mother shall inherit before kinsmen by the same father only:" thus a brother by the same father and mother is preferred to a brother by the father only, and a sister by the same father and mother, if she become a residuary with the daughter, is preferred to a brother by the father only; and the son of a brother by the same father and mother is preferred to the son of a brother by the same father only; and the rule is the same in regard to the paternal uncles of the deceased, and, after them, to the paternal uncles of his father, and, after them, to the paternal uncles of his grandfather.

The residuaries in another's right are four females; namely, those whose shares are half and two-thirds, and who become residuaries in right of their brothers, as we have before mentioned in their different cases; but she, who has no share among females, and whose brother is the heir, doth not become a residuary in his right; as in the case of a paternal uncle and a paternal aunt.

As to residuaries together with others. such is every female who becomes a residuary with another female: as a sister with a daughter, as we have mentioned before.

The last residuary is the master of a freedman, and then his residuary heirs, in the order before stated: according to the saying of Him, (on whom be blessing and peace!) "the master bears a relation like that of consanguinity;" but females have nothing among the heirs of a manumitter, according to the saying of Him, (on whom be blessing and peace!) "Women have nothing from their relation to freedmen, except when they have themselves manumitted a slave; or their freedman has manumitted one, or they have sold a manumission to a slave, or their vendee has sold it to his slave, or they have promised manumission after their death, or their promisee has promised it after his death, or unless their freedman or freedman's freedman draw a relation to them."

If the freedman leave the father and son of his manumitter, then a sixth of the right over the property of the freedman vests in the father, and the residue in the son, according to Abú Yusuf; but, according to the both Abú Hanifah and Muhammed, the whole right vests in the son, and, if a son and a grandfather of the manumitter

be left, the whole right over the freedman goes to the son, as all the learned agree. When a man possesses as his slave a kinsman in a prohibited degree, he manumits him, and his right vests in him ; as if there be three daughters, the youngest of whom has twenty *dinārs*, and the eldest, thirty ; and they too buy their father for fifty *dinārs* ; and afterwards their father die leaving some property ; then two-thirds of it are divided in thirds among them, as their legal shares, and the residue goes in fifths to the two who bought their father ; three-fifths to the eldest and two-fifths to the youngest ; which may be settled by dividing the whole into forty-five parts.

ON EXCLUSION.

Exclusion is of two sorts . I *Imperfect*, or an exclusion from one share, and an admission to another ; and this takes place in respect of, five persons, the husband or wife, the mother, the son's daughter, and the sister by the same father ; and an explanation of it has preceded. II *Perfect* exclusion ; there are two sets of persons having a claim to the inheritance . one of which sets is not excluded entirely in any case ; and they are six persons, the son, the father, the husband, the daughter, the mother, and the wife ; but the other set inherit in one case and in another case are excluded. This is grounded on two principles ; one of which is, that, " whoever is related to the deceased through any person, shall not inherit, while that person is living ; " as a son's son, with the son ; except the mother's children, for they inherit with her since she has no title to the whole inheritance ; the second *principle* is, " that the nearest of blood must take," and who the nearest is, we have explained in the chapter on residuaries. A person incapable of inheriting doth not exclude any one, *at least* in our opinion ; but according to Iḥu Masuud (may God be gracious to him'), he excludes imperfectly ; as an infidel, a murderer, and a slave. A person excluded may, as all the learned agree, exclude others ; as, if there be two brothers or sisters or more, on whichever side they are, they do not inherit with the father of the deceased, yet they drive the mother from a third to a sixth.

ON THE DIVISORS OF SHARES.

Know, that the six shares mentioned in the book of Almighty God are of two sorts : of the first are a moiety, a fourth, and an eighth ; and of the second sort are two-thirds, a third, and a sixth ; as the fractions are halved and doubled. Now, when any of these shares occur in cases singly, the divisor for each share is that number which gives it its name, (except half, which is from two) as a fourth denominated from four, an eighth from eight, and a third from three . when they occur by two, or three, and are of the same sort, then each integral number is the proper divisor to produce its fraction, and also to produce the double of that fraction, and the double of that, as six produces a sixth and likewise a third, and two-thirds ; but, when half, which is from the first sort, is mixed with all of the second sort or

with some of them, then the *division of the estate must be* by six ; when a fourth is mixed with all of the second sort or with some of them, then the division must be into twelve , and when an eighth is mixed with all of the second sort, or with some of them, then it must be into four and twenty parts.

ON THE INCREASE.

Áúl, or increase, is, when some fraction remains above the *regular* divisor, or when the divisor is too small to admit one share. Know, that the whole number of divisors is seven, four of which have no increase, namely, two, three, four, and eight ; and three of them have an increase. The *divisor* six is, therefore, increased by the *áúl* to ten, either by odd, or by even, numbers , twelve is raised to seventeen by odd, not by even, numbers , and twenty-four is raised to twenty-seven by one increase only , as in the case, called *Mumberiyya*, (or a case answered by Ali, when he was in the pulpit,) which was this, "A man left a wife, two daughters, and both his parents" After this there can be no increase, except according to Ibu Masúud, (may God be gracious to him !) for, in his opinion, the divisor twenty-four may be raised to thirty-one , as, if a man leave a wife, his mother, two sisters by the same parents, two sisters by the same mother only, and a son rendered incapable of inheriting.

ON THE EQUALITY, PROPORTION, AGREEMENT, AND DIFFERENCE OF TWO NUMBERS.

The *temákhul* (*tamásul*) of two numbers is the equality of one to the other, the *tedákhul* is, when the smaller of two numbers exactly measures the larger, or exhausts it ; or we call it *Tedákhul*, when the larger of the two numbers is divided exactly by the smaller ; or we may define it thus, when the larger exceeds the smaller by one number or more equal to it, or equal to the larger . or it is, when the smaller is an aliquot part of the larger, as three of nine. The *tawá'uk*, or agreement, of two numbers is, where the smaller does not exactly measure the larger, but a third number measures them both, as eight and twenty, each of which is measured by four, and they agree in a fourth ; since the number measuring them is the denominator of a fraction common to both. The *tabá'yun* of two numbers is, when no third number whatever measures the two discordant numbers, as nine and ten. Now the way of knowing the agreement or disagreement between two different quantities is, that the greater be diminished by the smaller quantity on both sides, once or oftener, until they agree in one point, and if they agree in unit only, there is no numerical agreement between them ; but, if they agree in any number, then they are (*said to be*) *mutawá'ik* in a fraction, of which that number is the denominator ; if two, is half , if three, in a third ; if four, in a quarter ; and so on, as far as ten , and above ten, they agree in a fraction ; I mean, if the number be eleven, the fraction of eleven, and, if it be fifteen, by the fraction of fifteen. Pay attention to this *rule*.

ON ARRANGEMENT.

In arranging cases there is need of seven principles ; three, between the shares and the persons, and four, between persons and persons. Of the three principles the first is, that, if the portions of all the classes be divided among them without a fraction, there is no need of multiplication, as, if a man leave both parents and two daughters. The second is, that, if the portions of one class be fractional, yet there be an agreement between their portions and their persons, then the measure of the number of persons, whose shares are broken, must be multiplied by the root of the case, and its increase, if it be an increased case, as, if a man leave both parents and ten daughters, or a woman leave a husband, both parents, and six daughters. The third principle is, that, if their portions leave a fraction, and there be no agreement between those portions and the persons, then the whole number of the persons, whose shares are broken, must be multiplied into the root of the case, as, if a woman leave her husband and five sisters by the same father and mother. Of the four other principles the first is, that, when there is a fractional division between two classes or more, but an equality between the numbers of the persons, then the rule is, that one of the numbers be multiplied into the root of the case ; as, if there be six daughters, and three grandmothers, and three paternal uncles. The second is, when some of the numbers equally measure the others ; then the rule is, that the greater number be multiplied into the root of the case, as, if a man leave four wives and three grandmothers and twelve paternal uncles. The third is, when some of the numbers are *mutawâfik*, or composit, with others, then the rule is, that the measure of the first of the numbers be multiplied into the whole of the second, and the product into the measure of the third, if the product of the third be *mutawâfik*, or, if not, into the whole of the third, and then into the fourth, and so on, in the same manner, after which the product must be multiplied into the root of the case as, if a man leave four wives, eighteen daughters, fifteen female ancestors, and six paternal uncles. The fourth principle is, when the numbers are *mutabâyan*, or not agreeing one with another ; and then the rule is, that the first of the numbers be multiplied into the whole of the second, and the product multiplied by the whole of the third, and that product into the whole of the fourth, and the last product into the root of the case, as, if a man leave two wives, six female ancestors, ten daughters, and seven paternal uncles.

SECTION.

When thou desirest to know the share of each class by arrangement, multiply what each class has from the root of the case by what thou hast already multiplied into the root of the case, and the product is the share of that class, and, if thou desirest to know the share of each individual in that class by arrangement, divide what each class has from the principle of the case by the number of the persons in it, then multiply the quotient into the multiplicand, and the product will

be the share of each individual in that class. Another method is, to divide the multiplied number by whichever class thou thinkest proper, then to multiply the quotient into the share of that set, by which thou hast divided the multiplied number, and the product *will be* the share of each individual in that set. Another method is by the way of proportion, which is the clearest, and it is, that a proportion be ascertained for the share of each class from the root of the case to the number of persons one by one, and that, according to such proportion from the multiplied number, a share be given to each individual of that class.

ON THE DIVISION OF THE PROPERTY LEFT AMONG HEIRS AND AMONG CREDITORS.

If there be a disagreement between the property left and the number arising from the arrangement, then multiply the portion of each heir, according to that arrangement, into the aggregate of the property, and divide the product by the number of the arrangement: but, when there is an agreement between the arrangement and the property left, then multiply the portion of each heir, according to the arrangement, into the measure of the property, and divide the product by the measure of the number arising from the arrangement. the quotient is the portion of that heir in both methods. This rule is in order to know the portion of each individual among the heirs; but, in order to know the portion of each class of them, multiply what each class has, according to the root of the case, into the measure of the property left, then divide the product by the measure of the case, if there be an agreement between the property left and the case, but if there be a disagreement between them, then multiply into the whole of the property left, and divide the product by the whole number arising from the verification of the case, and the quotient will be the portion of that class in both methods. Now, as to the payment of debts, the debts of all the creditors stand in the place of the arranging number.

ON SUBTRACTION.

When any one agrees to take a part of the property left, subtract his share from the number arising by the proof, and divide the remainder of the property by the portions of those who remain; as, if a woman leave her husband, her mother, and a paternal uncle. Now suppose that the husband agrees to take what was in his power of his bridal gift to the wife, this is deducted from among the heirs then what remains is divided between the mother and the uncle in thirds, according to their legal shares; and thus there will be two parts for the mother, and one for the uncle.

ON THE RETURN.

The return is the converse of the increase; and it takes place in what remains above the shares of those entitled to them, when there is

legal claimant of it : this *surplus* is returned to the sharers according to their rights, except the husband or the wife ; and this is the opinion of all the *prophet's* companions, as *Ali* and his followers, may God be gracious to them ! And our masters (to whom God be merciful !) have assented to it . Zaed, the son of Thabit (Sabit) says, that the surplus doth not revert, but *goes* to the public treasury ; and to this opinion have assented Urwah and Alzuhri and Málic and Alshâfi, may God be merciful to them !

Now the cases on this head are *in* four divisions : the first of them *is*, when there is in the case but one sort of kinsmen, to whom a return must be made, and none of those who are not entitled to a return . then settle the case according to the number of persons ; as, when the deceased has left two daughters, or two sisters, or two female ancestors ; settle it, therefore, by two. The second *is*, when there are joined in the case two or three sorts of those, to whom a return must be made, without any of those, to whom there is no return . then settle the case according to their shares , I mean by two, if there be two-sixths in the case ; or by three, when there are a third and a sixth in it ; or by four, when there are a moiety and a sixth in it ; or by five, when there are in it two-thirds and a sixth, or half and two-sixths, or half and a third. The third *is*, when in the first case, there is *any one* to whom no return can be made . then give the share of him or her, to whom there is no return, according to the *lowest denominator*, and if the residue exactly quadrate with the number of persons, who are entitled to a return, *it is well* , as, *if there be* a husband and three daughters ; but, if they do not agree, then multiply the measure of the number of the persons, if there be an agreement between the number of persons and the residue, into the denominator of the shares of those, to whom no return is to be made as, *if there be* a husband, and six daughters ; if not, multiply the whole number of the persons into the denominator of the shares of those, to whom there is no return ; and the product will set the case right . The fourth *is*, when, in the second case, there are any to whom no return is made : then divide what remains from the denominator of the share of him or them, who have no return, by the case of those, to whom a return must be made, and, if the remainder quadrate, *it is well* , and this *is* in one form ; that is, when a fourth *goes* to the wives, and the residue is distributed in thirds among those entitled to a return ; as, *if there be* a wife, and a grandmother, and two sisters by the mother's side . but, if it do not quadrate, then multiply the whole case of those, who are entitled to a return, into the denominator of the share of him or her, who is not entitled to it, and the product will be the denominator of the shares of the both classes ; as, *if there be* four wives, and nine daughters, and six female ancestors then multiply the shares of those, to whom no return, must be made, into the case of those, who are entitled to a return, and the shares of those, to whom a return is to be made, into what remains of the denominator of the share of these, who are not entitled to a return. If there be a fraction in some, adjust the case by the before mentioned principles.

ON THE DIVISION OF THE PATERNAL GRANDFATHER.

Abubeer the Just, (on whom be the grace of God !) and those who followed him, among the companions of the Prophet, say, "the brethren of the whole blood and the brethren by the father's side inherit not with the grandfather : " This is also the decision of *Abū Hunayfā*, (on whom be God's mercy !) and judgments are given conformably to it. Zaed, the son of Thabit, indeed, asserts, that they do inherit with the grandfather ; and of this opinion are both *Abū Yūsuf* and *Muhammed*, as well as *Mālic* and *Alshafi*. According to Zaed, the son of Thabit (on whom be God's mercy !) the grandfather, with brothers or sisters of the whole blood and by the father's side, takes the best in two cases, from the *mukāsamah*, or *division*, and from a third of the whole estate. The meaning of *mukāsamah* is that the grandfather is placed in the division as one of the brethren, and the brethren of the half blood enter into the division with those of the whole blood, to the prejudice of the grandfather ; but, when the grandfather has received his allotment, then the half blood are removed from the rest, *as if* disinherited, and receive nothing ; and the residue goes to the brethren of the whole blood ; except when, among those of the whole blood, there is a single sister, who receives her legal share, I mean the whole after the grandfather's allotment . then, if anything remains, *it goes* to the half blood ; if not, they have nothing : and this *is the case*, when a man leaves a grandfather, a sister by the same father and mother, and two sisters by the same father only . in *this case* there remains to those sisters a tenth of the estate, and the correct denominator *is* twenty ; but, if there be, in the preceding case, one sister by the same father only, nothing remains for her , and if one, entitled to a legal share, be mixed with them, then, after he has received his share, the grandfather has the best in the three arrangements ; either the division, when a woman leaves her husband, a grandfather, and a brother ; or a third of the residue *is given*, when a man leaves a grandfather, a grandmother, and two brothers, and a sister by the same father and mother. Or a sixth of the whole estate *is given* when a man leaves a grandfather and a grandmother, a daughter, and two brothers, and, when a third of the residue is better from the grandfather, and the residue has not a complete third, multiply the denominator of the third into the root of the case . If a woman leave a grandfather, her husband, a daughter, her mother, and a sister by the same father and mother, or by the same father only, then a sixth is best for the grandfather, and the *root of the case* is raised to thirteen, and the sister has nothing. Know, that Zaed, the son of Thabit (on whom be God's grace !) has not placed the sister by the same father and mother, or by the same father, as entitled to a share with the grandfather, except in the case, named *acdarīyyah*, and that is, the husband, the mother, a grandfather, and a sister by the same father and mother, or by the same father only ; in *which case* the husband *ought to have* a moiety ; the mother, a third ; the grandfather, a sixth , and the sister, a moiety ; then the grandfather annexes his

share to that of the sister, and, a division is made between them *by the rule* "a male has the portion of two females ;" *and this is*, because the division is best for the grandfather. The root is *regularly* six, but is increased to nine ; and a correct distribution is made by twenty-seven. The case is called *acdarriyyah*, because it occurred on *the death* of a woman-belonging to the tribe of Acdar. If, instead of the sister, there be a brother or two sisters, there is no increase, nor *is that case an acdarriyyah*.

ON SUCCESSION TO VESTED INTERESTS.

If some of the shares become vested inheritances before the distribution, as *if a woman leave* her husband, a daughter, and her mother, and the husband die, before the estate can be distributed, leaving a wife and both his parents, *if* then the daughter die leaving two sons, a daughter, and a *maternal* grandmother, and then the grandmother die leaving her husband and two brothers, the principle in this *event* is, that the case of the first deceased be arranged, and that the allotment of each heir be *considered* as delivered according to that arrangement ; that, next, the case of the second deceased be arranged, and that a comparison be made between what was in his hands, or *vested in interest*, from the first arrangement, and between the second arrangement, in three situations ; and if, on account of equality, what *is* in his hands from the first arrangement quadrate with the second arrangement, then there is no need of multiplication ; but, if it be not right, then see whether there be an agreement between the two, and multiply the measure of the second arrangement into the whole of the first arrangement, and, if there be a disagreement between them, then multiply the whole of the second arrangement into the whole of the first arrangement, and the product *will be* the denominator of both cases. The allotments of the heirs of the first deceased must be multiplied into the former multiplicand, I mean into the second arrangement or into its measure ; and the allotments of the heirs of the second deceased must be multiplied into the whole of what *was* in his hands, or into its measure ; and if a third or a fourth die, put the second product in the place of the first arrangement, and the third case in the place of the second, in working ; *and thus in the case of* a fourth and a fifth, and so on to infinity.

ON DISTANT KINDRED.

A distant kinsman is every relation, who is neither a sharer nor a residuary. The generality of the *Prophet's* companions repeat a tradition concerning the inheritance of distant kinsmen, and, according to this, our masters and their followers (may God be merciful to them !) have decided ; but Zaed, the son of Thabit, (on whom be God's grace !) says . "there is no inheritance for the distant kindred, but the property *undisposed of* is placed in the public treasury," and with him agree Málik, and Akhafi, (on whom be God's mercy !) Now these distant kindreds are of four classes : the first class is descended from the deceased ;

and they are the daughters' children, and the children of the sons' daughters. The second sort *are* they from whom the deceased descend; and they are the excluded grandfathers and the excluded grandmothers. The third sort are descended from the parents of the deceased; and they *are* the sisters' children, and the brothers' daughters, and the sons of brothers by the same mother only. The fourth sort are descended from the two grandfathers and two grandmothers of the deceased; and they are, paternal aunts, and uncles by the same mother *only*, and maternal uncles and aunts. These, and all who are related to the deceased through them, are among the distant kindred. Abú Sulaimán reports from Muhammed, the son of Alhasan, *who reported* from Abú Hanifah (on whom be God's mercy!) that the second sort are the nearest of the *four* sorts, how high soever they ascend; then the first, how low soever they descend; then the third, how low soever; and lastly, the fourth, how distant soever *their degree*. but Abú Yusuf and Alhasan, the son of Ziyad, report from Abú Hanifah, (on whom be the mercy of God!) that the nearest of the *four* sorts is the first, then the second, then the third, then the fourth, like the order of the residuaries; and this *is taken as a rule* for decision. According to both *Abú Yusuf and Muhammed*, the third sort has a preference over the maternal grandfather.

ON THE FIRST CLASS.

The best entitled of them to the succession is the nearest of them in degree to the deceased; as the daughter's daughter, who is preferred to the daughter of the son's daughter; and, *if the claimants* are equal in degree, then the child of an heir is preferred to the child of a distant relation; as the daughter of a son's daughter is preferred to the son of a daughter's daughter, but, if their degrees be equal, and there be not among them the child of an heir, or, if all of them be the children of heirs, then, according to Abú Yusuf (may God be merciful to him!) and Alhasan, son of Ziyad, the persons of the branches are considered, and the property is distributed among them equally, whether the condition of the roots, as male or female, agree or disagree. but Muhammed (on whom be God's mercy!) considers the persons of the branches, if the sex of the roots agree, *in which respect* he concurs with the other two; and he considers the persons of the roots, if their sexes be different, and, he gives to the branches the inheritance of the roots, in opposition to the two *lawyers*. For instance, when a *man* leaves a daughter's son and a daughter's daughter, *then*, according to Abú Yusuf and Alhasan, the property is distributed between them, *by the rule* "the male has the portion of two females," their persons being considered; and, according to Muhammed, in the same manner, because the sexes of the roots agree: and, if a *man* leave the daughter of a daughter's son, and the son of a daughter's daughter, *then* according to the two *first mentioned lawyers*, the property *is divided* in thirds between the branches, by considering the persons, two-thirds of it *being given* to the male, and one-third to the female; but, according to

Muhammed, (on whom be God's mercy !) the property is divided between the roots, I mean *those* in the second rank, in thirds, two-thirds going to the daughter of the daughter's son, *namely*, the allotment of her father, and one-third of it to the son of the daughter's daughter, *namely*, the share of his mother. Thus, according to Muhammed, (to whom God be merciful !) when the children of the daughters are different in sex, the property is divided according to the first rank that differs among the roots ; then the males are arranged in one class, and the females in another class, after the division, and what goes to the males is collected and distributed according to the highest difference, that occurs among their children ; and, in the same manner, what goes to the females ; and thus the operation is continued to the end according to this scheme :

S	S	S	D	D	D	D	D	D	D	D	D
D	D	D	D	D	D	D	D	D	D	D	D
S	D	D	S	S	S	D	D	D	D	D	D
D	D	D	S	D	D	S	S	S	D	D	D
D	S	D	D	D	D	S	D	D	S	D	D
D	D	D	D	D	S	D	D	S	D	S	D

Thus Muhammed (to whom God be merciful !) takes the sex from the root at the time of the distribution, and the number from the branches ; as, if a man leave two sons of a daughter's daughter's daughter, and a daughter of a daughter's daughter's son and two daughters of a daughter's son's daughter, in this form :

THE DECEASED—

Daughter

Daughter

Daughter

Son

Daughter

Daughter

Daughter

Son

Daughter

Two Daughters

Daughter

Two Sons,

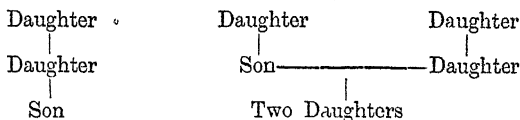
In this case according to Abú Yusuf (on whom be God's mercy !) the property is divided among the branches in seven parts, by considering their persons ; but, according to Muhammed, (to whom God be merciful !) the property is distributed according to the highest difference of sex, I mean in the second rank, in sevenths, by the number of branches in the roots ; and, according to him, four sevenths of it go to the daughters of the daughter's son's daughter, since that is the share of their grandfather, and three sevenths of it, which are the allotment of the two daughters, are divided between their two children, I mean

those in the third rank, in moieties; one moiety to the daughter of the daughter's daughter's son, *which* is the share of her father, and the other moiety to the two sons of the daughter's daughter's daughter, being the share of their mother the correct divisor of the property is, in this case, twenty-eight. The opinion of Muhammed (on whom be God's mercy!) is the more generally received of the two traditions from Abú Hanifah (to whom God be merciful!) in all decisions concerning the distant kindred; and this was the first opinion of Abú Yusuf; then he departed *from it*, and said that the roots were by no means to be considered.

A SECTION.

Our learned *lawyers* (on whom be the mercy of God!) consider the *different* sides in succession; except that Abú Yusuf (may God be merciful to him!) considers the sides in the persons of the branches, and Muhammed, (on whom be God's mercy!) considers the sides in the roots; as, when *a man* leaves two daughters of a daughter's daughter, who *are* also the two daughters of a daughter's son, and the son of a daughter's daughter, according to this scheme;

THE DECEASED.



In this case, according to Abú Yusuf, the property *is divided* among them in thirds, and then the deceased is considered as if he had left four daughters and a son; two-thirds of it, therefore, go to the two daughters, and one-third to the son; but, according to Muhammed, (to whom God be merciful!) the estate *is divided* among them in twenty-eight parts, to the two daughters twenty-two shares (sixteen in right of their father and six shares in right of their mother), and to the son six shares in right of his mother.

ON THE SECOND CLASS.

He, among them, who is preferred in the succession, is the nearest of them to the deceased, on *which* side soever he stands; and, in the case of equality in the degrees of proximity, then he, who is related to the deceased through an heir, is preferred by the opinion of Abu Suhail, surnamed Alferaidi, of Abu Fudail Alkhassaf, and of Ali, the son of Isai Albasri; but, no preference *is given* to him according to Abu Sulaiman Aljurjani, and Abu Ali Albaihathi Albusi. • If their degrees be equal, and there be none among them, who is related through an heir, or, if all of them be related through an heir, then, if the sex of those, through whom they are related, agree, and their relation be on the same side, the distribution is according to their persons; but if the sex of those, to whom they are related, be different, the property is distributed according to the first rank that differs in sex, as in the first

class; and, if their relation differ, then two-thirds *go* to those on the father's side, that *being* the share of the father, and one-third *goes* to those on the mother's side, that *being* the share of the mother: then what has been allotted to each set is distributed among them, as if their relation were the same.

ON THE THIRD CLASS.

The rule concerning them is the same with that concerning the first class; I mean, *that he is preferred in the succession, who is nearest to the deceased*: and, if they be equal in relation, then the child of a residuary is preferred to the child of a more distant kinsman; as, *if a man leave the daughter of a brother's son, and the son of a sister's daughter, both of them by the same father and mother, or by the same father, or one of them by the same father and mother, and the other by the same father only in this case the whole estate goes to the daughter of the brother's son, because she is the child of a residuary*; and, if it be by the same mother only, *distribution is made between them by the rule, "a male has the share of two females," and, by the opinion of Abú Yusuf, (to whom God be merciful!) in thirds, according to the persons, but, by that of Muhammed, (may God be merciful to him!) in moieties according to the roots*; and if they be equal in proximity, and there be no child of a residuary among them, or if all of them be children of residuaries, or if some of them be children of residuaries, and some of them children of those entitled to shares, and their relation differ, then Abú Yusuf, (to whom God be merciful!) considers the strongest *in consanguinity*; but Muhammed, (may God be merciful to him!) divides the property among the brothers and sisters in moieties, considering as well number of the branches, as the sides in the roots: and what has been allotted to each set is distributed among their branches, as in the first class: thus, *if a man leave the daughter of the daughter of a sister by the same father and mother, she is preferred to the son of the daughter of a brother by the same father only, according to Abú Yusuf, (to whom God be merciful!) by reason of the strength of relation*; but, according to Muhammed, (may God be merciful to him!) the property is divided between them both in moieties by consideration of the roots. So, when a man leaves three daughters of different brothers, and three sons and three daughters of different sisters, as in this figure;

THE DECEASED.

Sister—Sister—Sister—Brother—Brother—Brother

by the same

Mother—Father—Father—Mother—Father—Father
 and Mother *and Mother*

Son Son Son Daughter Daughter Daughter
 Daughter Daughter Daughter

In this case, according to Abú Yusuf, the property is divided among the branches of the whole blood, then among the branches by the same father, then among the branches by the same mother, according to the rule "the male has the allotment of two females," in fourths, by considering the persons; but, according to Muhammed, (to whom God be merciful!) a third of the estate is divided equally among the branches by the same mother, in thirds, by considering the equality of their roots in the division of the parents, and the remainder among the branches of the whole blood in moieties, by considering in the roots the number of the branches; one half to the daughter of the brother, the portion of the father, and the other between the children of the sister, the male having the allotment of two females, by considering the persons; and the estate is correctly divided by nine. If a man leave three daughters of different brother's sons, in this manner

THE DECEASED.

Daughter—Daughter—Daughter

of a Son of a Brother by the same

Father and Mother—Father—Mother

all the property goes to the daughter of the son of the brother by the same father and mother, by the unanimous opinion of the learned, since she is the child of a residuary, and hath also the strength of consanguinity.

ON THE FOURTH CLASS.

The rule as to them is, that, when there is only one of them, he has a right to the whole property, since there is none to obstruct him; and, when there are several, and the sides of their relation are the same, as paternal aunts and paternal uncles by the same mother with the father, or maternal uncles and aunts, then the stronger of them in consanguinity is preferred, by the general assent; I mean, they, who are related by father and mother, are preferred to those, who are related by the father only, and they, who are related by the father, are preferred to those who are related by the mother only, whether they be males or females; and, if there be males and females and their relation be equal, then the male has the allotment of two females; as, if there be a paternal uncle and aunt both by one mother, or a maternal uncle and aunt, both by the same father and mother, or by the same father, or by the same mother only, and if the sides of their consanguinity be different, then no regard is shown to the strength of relation; as, if there be a paternal aunt by the same father and mother, and a maternal aunt by the same mother, or a maternal aunt by the same father and mother, and a paternal aunt by the same mother only, then two-thirds go to the kindred of the father, for they are the father's allotment, and one-third to the kindred of the mother, for

that is the mother's allotment; then what is allotted to each set is divided among them, as if the place of their consanguinity were the same.

ON THEIR CHILDREN, AND THE RULES CONCERNING THEM.

The rule as to them is like the rule concerning the first class; I mean, *that* the best entitled of them to the succession is the nearest of them to the deceased on whichever side he is *related*, and if they be equal in relation, and the place of their consanguinity be the same, then he, who has the strength of blood, is preferred, by the general assent; and, if they be equal in degree and in blood, and the place of their consanguinity be the same, then the child of a residuary is preferred to whoever is *not such*; as, *if a man* leave the daughter of a paternal uncle, and the son of a paternal aunt, both of them by *the same* father and mother, or by *the same* father, all the property goes to the daughter of the paternal uncle; and, if one of them be by *the same* father and mother, and the other by the same father only, *then* all the estate goes to the claimant, who has the strength of consanguinity, according to the clearer tradition; *and this* by analogy to the maternal aunt by the same father, for though she be the child of a distant kinsman, yet she is preferred, by the strength of consanguinity, to the maternal aunt by the *same* mother *only*, though she be the child of an heir; since the weight which prevails by itself, that is, the strength of consanguinity, is greater than the weight by another, which is the descent from an heir. Some of them (the learned) say, *that* the whole estate goes to the daughter of the paternal uncle by the same father, since she is the daughter of a residuary; and, if they be equal in degree, yet the place of their relation differ, they have no regard *shown* to the strength of consanguinity, nor to the descent from a residuary, according to the clearer tradition; by analogy to the paternal aunt by the same father and mother, for though she have two bloods, and be the child of an heir on both sides, and her mother be entitled to a legal share, yet she is not preferred to the maternal aunt by the *same* father; but two-thirds *go* to whoever is related by the father, and there regard is shown to the strength of blood; then to the descent from a residuary; and one-third *goes* to whoever is related by the mother, and there *too* regard is shown to strength of consanguinity: then, according to Abû Yûsuf, (may God be merciful to him!) what belongs to each set is divided among the persons of their branches, with attention to the number of sides in the branches; and, according to Muhammed, (may God be merciful to him!) the property is distributed by the first line, *that* differs, with attention to the number of the branches and of the sides in the roots, as in the first class; then this rule is applied to the sides of the paternal uncles of this parents and their maternal uncles; then to their children; then to the side of the paternal uncles of the parents of this parents, and to their maternal uncles; then to their children, as in the *case* of residuaries.

ON HERMAPHRODITES.

To the hermaphrodite, *whose sex is quite doubtful, is allotted the smaller of two shares, I mean the worse of two conditions, according to Abú Hanífah, (may God be merciful to him !)* and his friends ; and this is the doctrine of the generality of the *Prophet's* companions, (may God be gracious to them !) and conformable to it are decisions *given* ; as, when a *man* leaves a son, and a daughter, and an hermaphrodite, then the hermaphrodite has the share of a daughter, since that is ascertained . and according to Aámir Alshábi, (and this is the opinion of Ibnu Abbás, may God be gracious to them both) the hermaphrodite has a moiety of the two shares in the controversy ; but *the two great lawyers* differ in putting in practice the doctrine of Alshábi ; for Abú Yúsof says, *that* the son has one share, and the daughter half a share, and the hermaphrodite three-fourths of a share, since the hermaphrodite would be entitled to a share, if he were a male, and to half a share, if he were a female, and this *is* settled by *his* taking half the sum of the two portions ; or, we may say, he takes the moiety which is ascertained, together with half the moiety which is disputed, so that there come to him three-fourths of a share ; for he (Abú Yúsof) *pays* attention to the legal share and to the increase, and he verifies *the case* by nine : or, we may say, the son has two shares, and the daughter one share, and the hermaphrodite a moiety of the two allotments, and that *is* a share and half a share. But Muhammed, (may God be merciful to him !) says, that the hermaphrodite would take two-fifths of the estate, if he were a male, and a fourth of the estate, if he were a female, and that he takes a moiety of the two allotments, and that *will give him* one-fifth and an eighth by attention to both sexes ; and the case is rectified by forty ; since that is the product of one of the *numbers in the* two cases, which is four multiplied into the other, which is five, and that product multiplied by two (*which is the number of the*) cases ; and then he, who takes anything by five, *has it* multiplied into four, and he, who takes anything by four, *has it* multiplied into five ; so that thirteen shares go to the hermaphrodite, and eighteen to the son, and nine to the daughter.

ON PREGNANCY.

The longest time of pregnancy *is* two years, according to Abú Hanífah, (may God be merciful to him !) and his companions ; and according to Laith, the son of Sad Alfahmí, (may God be merciful to him !) three years ; and, according to Alsháfi, (may God be merciful to him !) four years : but according to Alzuhri, (may God be merciful to him !) seven years : and the shortest time for it is six months . There is reserved for the child in the womb, according to Abú Hanífah, (may God be merciful to him !) the portion of four sons, ~~and~~ the portion of four daughters, whichever of the two is most : and there is given to the rest of the heirs the smallest of the portions ; but, according to Muhammed, (may God be merciful to him !) there

is reserved the portion of three sons or of three daughters, whichever of the two is most : Laith, son of Sad, (may God be gracious to him !) reports this *opinion* from him ; but, by another report, *there is reserved* the portion of two sons ; and one of the two opinions is that of Abú Yusuf, (may God be merciful to him !) as Hishám reports it from him ; but Alkhasasáf reports from Abú Yusuf, (may God be merciful to him !) that there should be reserved the share of one son or of one daughter ; and, according to this, decisions *are made* ; and security must be taken, according to his opinion. And, if the pregnancy was by the deceased, and the widow produce a child at the full *time* of the longest period *allowed* for pregnancy, or within it, and the woman hath not confessed her having broken her legal term *of abstinence*, *that child* shall inherit ; and others may inherit from him ; but, *if* she produce a child after the longest *time* of gestation, he shall not inherit, nor shall others inherit from him : and if the pregnancy was from another man than the deceased, and she, *the kinswoman*, produce a child in six months or less, he shall inherit ; but, if she produce the child after the less period of gestation, he shall not inherit.

Now the way of knowing the life of the child at the time of its birth, is, that there be found in him that, by which life is proved ; as a voice, or sneezing, or weeping, or smiling, or moving a limb ; and, if the smallest *part* of the child come out, and then he die, he shall not inherit ; but if the greater *part* of him come out, and then he die, he shall inherit : and, if he come out straight (*or with his head first*), then his breast is considered ; I mean, if his whole breast come out, he shall inherit ; but if he come out inverted (*or with his feet first*), then his navel is considered.

The chief rule in arranging cases on pregnancy is, that the case be arranged by two suppositions, I mean by supposing, that the child in the womb is a male, and by supposing, that it is a female : then, compare the arrangement of both cases ; and, if the numbers agree, multiply the measure of one of the two into the whole of the other ; and, if they disagree, then multiply the whole of one of the two into the whole of the other, and the product will be the arranger of the case : then multiply the allotment of him, who would have something from the case, which supposes a male, into that of the case, which supposes a female, or into its measure ; and then that of him, who takes on the supposition of a female, into the case of the male, or into its measure, as we have directed concerning the hermaphrodites ; then examine the two products of that multiplication, and whether of the two is the less, that shall be given to such an heir ; and the difference between them must be reserved from the allotment of that heir, and, when the child appears, if he be entitled to the whole of what has been reserved, it is well, but, if he be entitled to a part, let him take that part, and let the remainder be distributed among the *other* heirs, and let there be given to each of those heirs what was reserved from his allotment as, when a man has left a daughter

and both his parents, and a wife pregnant, then the case is *rectified* by twenty-four on the supposition, that the child in the womb is a male, and by twenty-seven on the supposition, that it is a female; Now between the two numbers of the arrangement there is an agreement in a third, and, when the measure of one of the two is multiplied into the whole of the other, the product amounts to two hundred and sixteen, and by that *number* is the case verified; and, on the supposition of its male sex, the wife takes twenty-seven shares, and each of the two parents, thirty-six; but, on the supposition of its female sex, the wife has twenty-four, and each of the parents, thirty-two; and twenty-four are given to the wife, and three shares from her allotment are reserved; and from the allotment of each of the parents are reserved four shares; and thirteen shares are given to the daughter; since the *part* reserved in her right is the allotment of four sons, according to Abú Hanifah, (may God be merciful to him!) and when the sons are four, then her allotment is one share and four-ninths of a share out of four-and-twenty multiplied into nine, and that makes thirteen shares, and this *belongs* to her, and the residue is reserved, which *amounts to* an hundred and fifteen shares. If the widow bring forth one daughter or more, then all the *part* reserved goes to the daughters; and, if she bring forth one son or more, then must be given to the widow and both parents what was reserved from their shares; and what remains must be divided among the children: and, if she bring forth a dead child, then must be given to the widow and both parents what was reserved from their shares, and to the daughter, a complete moiety, that is, ninety-five shares more, and the remainder, which is nine shares, to the father, since he is the residuary.

ON A LOST PERSON.

A lost person is *considered as* living in regard to his estate; so that no one can inherit from him; and his estate is reserved, until his death can be ascertained; or the term for a *presumption of it* has passed over. Now the traditionary opinions differ concerning that term; for, by the clearer tradition, "when not one of his equals in age remains, judgment may be given of his death;" but Hasan, the son of Ziyad, reports from Abú Hanifah, (may God be merciful to him!) that the term is an hundred and twenty years from the day on which he was born, and Muhammed says, an hundred and ten years; and Abú Yusuf says, an hundred and five years: and some of them, the *learned say*, ninety years; and according to that *opinion* are decisions made. Some of the *learned in the law say*, that the estate of a lost person must be reserved for the final regulation of the *imám*, and the judgment suspended as to the right of another person, so that his share from the estate of his ancestors must be kept, as in the case of pregnancy; and, when the term is elapsed, and judgment given of his death, then his estate goes to his heirs, who are to be found, according to the judgment on his decease; and, what was reserved on his account from the estate of his ancestor, is restored to the heir of his ancestor,

from whose estate that share was reserved ; since the lost person is dead as to the estate of another.

The principle in arranging cases concerning a lost person is, that the cases be arranged on a supposition of his life, and then arranged on a supposition of his death ; and the rest of the operation is what we have mentioned in the chapter of pregnancy.

ON AN APOSTATE.

When an apostate *from the faith* has died naturally, or been killed, or passed into a hostile country, and the *Kādī* has given judgment on his passage *thither*, then what he had acquired at the time of his being a believer, *goes* to his heirs, *who are* believers ; and what he has gained since the time of the apostacy is placed in the public treasury, according to Abú Hanifah, (may God be merciful to him !) ; but, according to the two *lawyers*, (Abú Yúsuf and Muhammed,) both the acquisitions *go* to his believing heirs ; and, according to Alsháfí, (may God be merciful to him !) both the acquisitions are placed in the public treasury ; and what he gained after his arrival in the hostile country, that is confiscated by the general consent : and all the property of a female apostate *goes* to her heirs, *who are* believers, without diversity of opinion among our masters, to whom God be merciful ! but an apostate shall not inherit from any one, neither from a believer nor from an apostate like himself, and so a female apostate shall not inherit from any one ; except when the people of a whole district become apostates altogether, for then they inherit reciprocally.

ON A CAPTIVE.

The rule concerning a captive is like the rule of other believers in regard to inheritance, as long as he has not departed from the faith ; but if he has departed from the faith, then the rule concerning him is the rule concerning an apostate ; but, if his apostacy be not known, nor his life nor his death, then the rule concerning him is the rule concerning a lost person.

ON PERSONS DROWNED, OR BURNED, OR OVERWHELMED IN RUINS.

When a company of *persons* die, and it is not known which of them died first, they are considered, as if they had died at the same moment, and the estate of each of them *goes* to his heirs, *who are* living, and some of the deceased shall not inherit from others. this is the approved *opinion*. But Alí, and Ibnú Masúúd say, according to one of the traditions from them, *that* some of them shall inherit from others, except in what each of them has inherited from the companion of his fate.

EXTRACTS

FROM

MACNAGHTEN'S PRINCIPLES

OF

MAHOMEDAN LAW.

CHAPTER II.

OF INHERITANCE ACCORDING TO THE IMAMIYA³ OR SHIA DOCTRINE

Three sources
of the right of
inheritance

1. According to the tenets of this Sect, the right of inheritance proceeds from three different sources

Enumeration
of them.

2 First, it accrues by virtue of consanguinity. Secondly, by virtue of marriage. Thirdly, by virtue of Willa *

Heirs by con-
sanguinity con-
sist of three
degrees.

3. There are three degrees of heirs who succeed by virtue of consanguinity, and so long as there is any one of the first degree, even though a female, none of the second degree can inherit; and so long as there is any one of the second degree, none of the third can inherit.

Enumeration
of heirs of the
first degree

4 The first degree comprises the parents, and the children, and grandchildren, how low in descent soever, the nearer of whom exclude the more distant. Both parents, or one of them inherit together with a child, a grandchild, or a great-grandchild: but grandchild does not inherit together with a child, nor a great-grandchild with a grandchild.

Their relative
rights

5. This degree is divided into two classes; the roots which are limited and the branches which are unlimited. The former are the parents who are not represented by their parents; the latter are the children who are represented by their children. An individual of one class does not exclude an individual of the other, though his relation to the deceased be more proximate; but the individuals of either class exclude each other in proportion to their proximity.

Sub-division
of

Of co-heirs
with children

6 No claimant has a title to inherit with children, but the parents, or the husband and wife.

* In a note to his translation of the Hedaya, Mr. Hamilton observes, that "there is no single word in our language fully expressive of this term. The shortest definition of it is, 'the relation between the master (or patron) and his Freedman,' but even this does not express the whole meaning." Had he proceeded to state "and the relation between two persons who had made a reciprocal testamentary contract," the definition might have been more complete

Of the son's
and daughter's
offspring

7. The children of sons take the portions of sons, and the children of daughters take the portions of daughters, however low in descent.

8. The second
degree

Of the second
degree

Their relative
rights.

8. The second degree comprises the grandfather, and grandmother, and other ancestors, and brothers and sisters and their descendants, however low in descent, the nearer of whom exclude the more distant. The great-grandfather cannot inherit together with a grandfather or a grandmother; and the son of a brother cannot inherit with a brother or a sister, and the grandson of a brother cannot inherit with the son of a brother, or with the son of a sister.

9. This degree again is divided into two classes; the grandparents and other ancestors, and the brethren and their descendants. Both these classes are unlimited, and their representatives in the ascending and descending line may be extended *ad infinitum*. An individual of one class does not exclude an individual of the other, though the relation to the deceased be more proximate; but the individuals of either class exclude each other in proportion to their proximity.

Sub-division

10. The third degree comprises the paternal and maternal uncles and aunts and their descendants, the nearer of whom exclude the more distant. The son of a paternal uncle cannot inherit with a paternal uncle or a paternal aunt, nor the son of a maternal uncle with a maternal uncle or a maternal aunt.

Of the third
degree.

Their relative
rights.

11. This degree is unlimited in the ascending and descending line, and their representatives may be extended *ad infinitum*; but so long as there is a single aunt or uncle of the whole blood, the descendants of such persons cannot inherit. Uncles and aunts all share together; except some be of the half and others of the whole blood. A paternal uncle by the same father only is excluded by a paternal uncle by the same father and mother; and the son of a paternal uncle by the whole blood excludes a paternal uncle of the half blood.

Additional
rules

12. In default of all the heirs above enumerated, the paternal and maternal uncles and aunts of the father and mother succeed, and in their default their descendants, to the remotest generation, according to their degree of proximity to the deceased. In default of all those heirs, the paternal and maternal uncles and aunts of the grandparents and great-grandparents inherit according to their degree of proximity to the deceased *

Enumeration
of other heirs of
the third degree

* There seems to be some similarity between the order of succession here laid down, and that prescribed in the English Law for taking out letters of administration: "In the first place the children, or on failure of the children, the parents of the deceased, are entitled to the administration, both which indeed are in the first degree, but with us the children are allowed the preference. Then follow brothers, grandfathers, uncles or nephews (and the females of each class respectively), and lastly cousins. The half blood is admitted to the administration as well as the whole, for they are of the kindred of the Intestate." Blackstone's Com., Vol. II., p. 504

13. It is a general rule that the individuals of the whole blood exclude those of the half blood who are of the same rank; but this rule does not apply to individuals of different ranks. For instance, a brother or sister of the whole blood excludes a brother or sister of the half blood. a son of the brother of the whole blood, however, does not exclude a brother of the half blood, because they belong to different ranks: but he would exclude a son of the half brother who is of the same rank, so also an uncle of the whole blood does not exclude a brother of the half blood, though he does an uncle of the half blood.

14. The principle of the whole blood, excluding the half blood, is confined also to the same rank, among collaterals; for instance, generally a nephew or niece whose father was of the whole blood, does not exclude his or her uncle or aunt of the half blood; except in the case of their being a son of a paternal uncle of the whole blood, and a paternal uncle of the half blood by the same father only, the latter of whom is excluded by the former.

15. This principle of exclusion does not extend to uncles and aunts being of different sides of relation to the deceased; for instance, a paternal uncle or aunt of the whole blood does not exclude a maternal uncle or aunt of the half blood; but a paternal uncle or aunt of the whole blood excludes a paternal uncle or aunt of the half blood, and so likewise a maternal uncle or aunt of the whole blood excludes a maternal uncle or aunt of the half blood.

16. If a man leave a paternal uncle of the half blood and a maternal aunt of the whole blood, the former will take two-thirds in virtue of his claiming through the father, and the latter one-third in virtue of her claiming through the mother; as the property would have been divided between the parents in that proportion, had they been the claimants instead of the uncle and aunt.

17. The general rule, that those related by the same father and mother exclude those who are related by the same mother only, does not operate in the case of individuals to whom a legal share has been assigned.

18. If a man leave a whole sister and a sister by the same mother only, the former will take half the estate and the latter one-sixth, the remainder reverting to the whole sister; and if there be more than one sister by the same mother only, they will take one-third, and the remaining two-thirds will go to the whole sister.

19 Where there are two heirs, one of whom stands in a double relation ; for instance, if man die leaving a maternal uncle, and a paternal uncle who is also his maternal uncle,* the former will take one-third, and the latter two-thirds, and he will be further entitled to take one-half of the third which devolved on the maternal uncle ; and thus he will succeed altogether to five-sixths, leaving the other but one-sixth.

20. Secondly, those who succeed in virtue of marriage are the husband and wife, who can never be excluded in any possible case ; and their shares are half for the husband, and a fourth for the wife, where there are no children, and a fourth for the husband, and an eighth for the wife, where there are children.†

21. Where a wife dies, leaving no other heir, her whole property devolves on her husband ; and where a husband dies leaving no other heir but his wife, she is only entitled to one-fourth of his property, and the remaining three-fourths will escheat to the public treasury.

22. If a sick man marry and die of that sickness without having consummated the marriage, his wife shall not inherit his estate ; nor shall he inherit if his wife die before him, under such circumstances. But if a sick woman marry, and her husband die before her, she shall inherit of him ; though the marriage was never consummated, and though she never recovered from that sickness.

23. If a man on his deathbed divorce his wife, she shall inherit, provided he die of that sickness within one year from the period of divorce, but not if he lived for upwards of a year.

24 In case of a reversible divorce, if the husband die within the period of his wife's probation, or if she die within that period, they have a mutual right to inherit each other's property.

25 The wife by an usufructuary, or temporary marriage, has no title to inherit.‡

26. Thirdly, those who succeed in virtue of *Willa* ; but they never can inherit so long as there is any claimant by consanguinity or marriage.

* The relation of paternal and maternal uncle may exist in the same person in the following manner : A having a son C by another wife, marries B having a daughter D by another husband. Then C and D intermarry and have issue, a son E, and A and B have a son F. Thus F is both the paternal and maternal uncle of E. So likewise if a person have a half brother by the same father, and a half sister by the same mother who intermarry, he will necessarily be the paternal and maternal uncle of their issue.

† See Summary [This principle is defective.]

‡ This species of contract is reprobated by the orthodox sect, and they are both considered wholly illegal. See Hamilton's Hedaya, Vol. I., pp. 71 and 72.

27. *Willa* is of two descriptions that which is derived from man-
 mission, where the emancipator, by such act, derives
 Two descrip- tions of. a right of inheritance; and that which depends on
 mutual compact, where two persons reciprocally engage, each to be
 heir of the other.

The first pre- 28. Claimants under the latter title are excluded by
 ferred. claimant under the former.

29. The general rules of exclusion, according to this sect, are simi-
 lar to those contained in the orthodox doctrine expect
 General rules of exclusion. that they make no distinction between male and
 female relations. Thus a daughter excludes a son's son and a maternal
 uncle excludes a paternal granduncle; whereas according to the
 orthodox doctrine in such cases the daughter would get only half,
 and the maternal uncle would be wholly excluded by the paternal uncle
 of the father.

Difference of 30. Difference of allegiance is no bar to inheritance,
 allegiance does not exclude, and homicide, whether justifiable or accidental, does not
 not exclude, operate to exclude from the inheritance. The homicide,
 nor homicide unless wilful. to disqualify, must have been of *malice prepense*.

31. The legal number of shares into which it is necessary to make
 the property, cannot be increased if found insufficient
 The doctrine of the increase not admitted to satisfy all the heirs without a fraction. In such
 case a proportionate deduction will be made from the
 portion of such heir as may, under certain circumstances, be deprived
 of a legal share, or from any heir whose share admits of diminution.

For instance, in the case of husband, a daughter and
 Example. parents Here the property must be divided into
 twelve, of which the husband is entitled to three, or a fourth; the
 parents to two-sixths, or four, and the daughter to half; but there
 remain only five shares for her instead of six, or the moiety to which
 she is entitled. In this case, according to the orthodox doctrine, the
 property would have been made into thirteen parts to give the daughter
 her six shares; but according to the *Imamiya* tenets, the daughter
 must be content with the five shares that remain, because in certain
 cases her right as a legal sharer is liable to extinction; for instance,
 had there been a son, the daughter would not have been entitled to
 any specific share, and she would become a residuary; whereas the
 husband or parents can never be deprived of a legal share, under any
 circumstances.

32. Where the assets exceed the number of heirs, the surplus reverts
 to the heirs. The husband is entitled to share in the
 Of the return return; but not the wife. The mother also is not en-
 titled to share in the return, if there are brethren: and where there
 is any individual possessing a double relation, the surplus reverts ex-
 clusively to such individual.

33. On a distribution of the estate, the elder son, if he be worthy, is entitled to his father's sword, his Koran, his wearing apparel, and his ring.*

CHAPTER III.

OF SALE.

- Definition of sale. 1. Sale is defined to be mutual and voluntary exchange of property for property.
- How effected. 2. A contract of sale may be effected by the express agreement of the parties, or by reciprocal delivery.
- Four kinds of. 3. Sale is of four kinds; consisting of commutation of goods for goods: of money for money: of money for goods, and of goods for money; which last is the most ordinary species of this kind of contract.
- Four denominations of. 4. Sales are either absolute, conditional, or imperfect, or void.
- Of an absolute sale. 5. An absolute sale is that which takes place immediately; there being no legal impediment.
- Of a conditional sale. 6. A conditional sale is that which is suspended on the consent of the proprietor, or (where he is a minor) on the consent of his guardian, in which there is no legal impediment, and no condition requisite to its completion but such consent.
- Of an imperfect sale. 7. An imperfect sale is that which takes effect on the legal defect being cured by such seizure.
- Of a void sale. 8. A void sale is that which can never take effect; in which the articles opposed to each other, or one of them, not bearing any legal value, the contract is null.
- Of the consideration. 9. The consideration may consist of whatever articles, bearing a legal value, the seller and purchaser may agree upon; and the property may be sold for prime cost, or for more, or for less than prime cost.
- Of the parties. 10. It is requisite that there should be two parties to every contract of sale, except where the seller and purchaser employ the same agent, or where a father or a guardian

* In the foregoing summary I am not aware that I have omitted any point of material importance. The legal shares allotted to the several heirs are of course the same as those prescribed in the Suni Code, both having the precepts of the Koran as their guide. The rules of distribution and of ascertaining the relative shares of the different claimants are also (*mutatis mutandis*) the same. It is not worth while to notice in this compilation the doctrines of the *Imamiya* sect on the law of contracts, or their tenets in miscellaneous matters. A Digest of their laws, relative to those subjects, was sometime ago prepared, and a considerable part of it translated by an eminent Orientalist (Colonel John Bailie), by whom, however, it was left unfinished; probably from an opinion that the utility of the undertaking might not be commensurate to the time and labour employed upon it.

makes a sale on behalf of a minor, or where a slave purchases his own freedom by permission of his master.

11. It is sufficient that the parties have a sense of the obligation they contract, and a minor, with the consent of his guardian, or a lunatic in his lucid intervals, may be contracting parties.

12. In a commutation of goods for goods, or of money for money, it is illegal to stipulate for a future period of delivery ; but in a commutation of money for goods or of goods for money, such stipulation is authorised.

13. It is essential to the validity of every contract of sale, that the subject of it, and the consideration, should be so determinate as to admit of no future contention regarding the meaning of the contracting parties.

14. It is also essential that the subject of the contract should be in actual existence at the period of making the contract, or that it should be susceptible of delivery either immediately or at some future definite period.

15. In a commutation of money for money, or of goods for goods, if the articles opposed to each other are of the nature of similars, equality in point of quantity is an essential condition.

16. It is unlawful to stipulate for any extraneous condition, involving an advantage to either party, or for any uncertainty which might lead to future litigation ; but if the extraneous condition be actually performed, or the uncertainty removed, the contract will stand good.

17. It is lawful to stipulate for an option of desolving the contract ; but the term stipulated should not exceed three days.

18. When payment is deferred to a future period, it must be determinate and cannot be suspended on an event, the time of the occurrence of which is uncertain, though its occurrence be inevitable. For instance, it is not lawful to suspend payment until the wind shall blow, or until it shall rain, nor is it lawful, even though the uncertainty be so inconsiderable as almost to amount to a fixed term ; for instance, it is not lawful to suspend payment until the sowing or reaping time.

19. It is not lawful to sell property in exchange for a debt due from a third party, though it is for a debt due from the seller.

20. A resale of personal property cannot be made by the purchaser until the property shall actually have come into his possession.

Warranty implied.

21. A warranty as to freedom from defect and blemish, is implied in every contract of sale.

Where the property differs from the description.

22. Where the property sold differs, either with respect to quantity or quality, from what the seller has described it, the purchaser is at liberty to recede from the contract.

Sale of land.

23. By the sale of land, nothing thereon, which is of a transitory nature, passes. Thus the fruit of a tree belongs to the seller, though the tree itself, being a fixture, appertains to the purchaser of the land.

Responsibility in case of option

24. Where an option of dissolving the contract has been stipulated by the purchaser, and the property sold is injured or destroyed in his possession, he is responsible for the price agreed upon : but where the stipulation was on the part of the seller, the purchaser is responsible for the value only of the property.

Option how annulled.

25. But the condition of option is annulled by the purchaser's exercising any act of ownership, such as to take the property out of *statu quo*.

Option to purchasers of unseen property

26. Where the property has not been seen by the purchaser, nor a sample (where a sample suffices), he is at liberty to recede from the contract, provided he may not have exercised any act of ownership ; if upon seeing the property it does not suit his exception, even though no option may have been stipulated.

Exception

No option to sellers

27. But though the property have not been seen by the seller, he is not at liberty to recede from the contract (except in a sale of goods for goods), where no option was stipulated.

Exception.

Option on discovering a defect

28. A purchaser, who may not have agreed to take the property with all its faults, is at liberty to return it to the seller on the discovery of a defect, of which he was not aware at the time of the purchase, unless, while in the hands of the purchaser, it received a further blemish ; in which case he is only entitled to compensation.

Exception.

Rule in case of resale.

29. But if the purchaser have sold such faulty article to a third person, he cannot exact compensation from the original seller ; unless, by having made an addition to the article prior to the sale, he was precluded from returning it to the original seller.

Exception

Cases in which restitution may be demanded.

30. In a case where articles are sold, and are found on examination to be faulty, complete restitution of the price may be demanded from the seller, even though they have been destroyed in the act of trial, if the purchaser had not

derived any benefit from them ; but if the purchaser had made And compen- beneficial use of the faulty articles, he is only entitled sation only. to proportional compensation.

31. If a person sell an article which he had purchased, and be The first pur- compelled to receive back such article and to refund chaser is on a footing with the second. the purchase-money, he is entitled to the same remedy against the original seller, if the defect be of an inherent nature.

Proviso.

32. If a purchaser, after becoming aware of a defect in the article pur- Remedy chased, make use of the article or attempt to remove against the seller how lost. the defect, he shall have no remedy against the seller (unless there may have been some special clause in the contract) ; such act on his part implying acquiescence.

33. It is a general rule, that if the articles sold are of such a nature General rules as not easily to admit of separation or division without for the right of restitution. injury, and part of them, subsequently to the purchase, be discovered to be defective, or to be the property of a third person, it is not competent to the purchaser to keep a part and to return a part, demanding a proportional restitution of the price for the part returned. In this case he must either keep the whole, demanding compensation for the proportion that is defective, or he must return the whole demanding complete restitution of the price. It is otherwise where the several parts may be separated without injury. And those of compensation

34. The practices of forestalling, regrating, and engrossing, and of Illegal prac- selling on Friday, after the hour of prayer, are all prohi- tices bited, though they are valid.

CHAPTER IV.

OF SHUF¹AA, OR PRE-EMPTION.

1. *Shuf¹aa*, or the right of pre-emption, is defined to be a power of possessing property which has been sold by paying a sum equal to that paid by the purchaser. Definition of pre-emption.

2. The right of pre-emption takes effect with regard to property sold, or parted with by some means equivalent to sale, but not with regard to property, the possession of which has been transferred by gift, or by will, or by inheritance ; unless the gift was made for a consideration, and the consideration was expressly stipulated ; but pre-emption cannot be claimed where the donor has received a consideration for his gift, such consideration not having been expressly stipulated. With respect to what property it does and to what it does not take effect

3. The right of pre-emption takes effect with regard to property whether divisible or indivisible; but it does not apply to moveable property; and it cannot take effect until after the sale is complete, as far as the interest of the seller is concerned.
 - Additional rules
4. The right of pre-emption may be claimed by all descriptions of persons. There is no distinction made on account of difference of religion.
 - Not restricted to any particular class.
5. All rights and privileges which belong to an ordinary purchaser, belong equally to a purchaser under the right of pre-emption.
 - Rights and privileges of.
6. The following persons may claim the right of pre-emption in the order enumerated: a partner in the property sold, a participator in its appendages, and a neighbour.
 - Who may claim pre-emption.
7. It is necessary that the person claiming the right, should declare his intention of becoming the purchaser, immediately on hearing of the sale, and that he should, with the least practicable delay, make affirmation, by witness, of such his intention, either in the presence of the seller, or of the purchaser, or on the premises.
 - Necessary forms to be observed.
8. The above preliminary conditions being fulfilled, the claimant of pre-emption is at liberty at any subsequent period to prefer his claim to a Court of Justice.*
 - Claim when preferable
9. The first purchaser has a right to retain the property until he has received the purchase-money from the claimant by pre-emption, and so also the seller in a case where delivery may not have been made.
 - Rights of the first purchaser.
10. Where an intermediate purchaser has made any improvements to the property, the claimant by pre-emption must either pay for their value, or cause them to be removed; and where the property may have been deteriorated by the act of the intermediate purchaser, he (the claimant) may insist on a proportional abatement of the price; but where the deterioration has taken place without the instrumentality of the intermediate purchaser, the claimant by pre-emption must either pay the whole price, or resign his claim altogether.
 - Rules where the property has undergone alteration while in the possession of the first purchaser.

* Much difference of opinion prevails as to this point. It seems equitable that there should be some limitation of time to bar a claim of this nature; otherwise a purchaser may be kept in a continual state of suspense. Ziffer and Muhammad are of opinion (and such also is the doctrine according to one tradition of Abu Yusuf), that if the claimant causelessly neglect to advance his claim for a period exceeding one month, such delay shall amount to a defeasance of his right; but according to Abu Hanifa, and another tradition of Abu Yusuf, there is no limitation as to time. This doctrine is maintained in the *Fatawa Aulunguri*, in the *Muhitu Saruakhsi* and in the *Huday*, and it seems to be the most authentic and generally prevalent opinion. But the compiler of the *Fatawa Aulunguri* admits that decisions are given both ways.

11. But a claimant by pre-emption having obtained possession of, and made improvements to property, is not entitled to compensation for such improvements, if it should afterwards appear that the property belong to a third person. He will, in this case, recover the price from the seller or from the intermediate purchaser (if possession had been given), and he is at liberty to remove his improvements.

Rules where the property has been improved by the claimant by pre-emption, and it appear to belong to a third person.

12. Where there is a dispute between the claimant by pre-emption and the purchaser as to the price paid, and neither party have evidence, the assertion, on oath, of the purchaser must be credited; but where both parties have evidence, that of the claimant by pre-emption should be received in preference.

Where there is a dispute as to the price paid.

13. There are many legal devices by which the right of pre-emption may be defeated. For instance, where a man fears that his neighbour may advance such a claim, he can sell all his property with the exception of that part immediately bordering on his neighbour's; and where he is apprehensive of the claim being advanced by a partner, he may, in the first instance, agree with the purchaser for some exorbitant nominal price, and afterwards commute that price for something of an inferior value; when, if a claimant, by pre-emption appear, he must pay the price first stipulated, without reference to the subsequent commutation.

Legal devices by which a claim of pre-emption may be evaded.

CHAPTER V.

OF GIFTS.

Definition of gift.

1. A gift is defined to be the conferring of property without a consideration.

Essential conditions of.

2. Acceptance and seizin, on the part of the donee, are as necessary as relinquishment on the part of the donor.

Cannot be made to take effect in futuro.

3. A gift cannot be made to depend on a contingency, nor can it be referred to take effect at any future definite period.

4. It is necessary that a gift should be accompanied by delivery of possession, and that seizin should take effect immediately, or, if at a subsequent period, by desire of the donor.

Delivery and seizin requisite.

The thing given must be actually existing at the time.

5. A gift cannot be made of anything to be produced in futuro; although the means of its production may be in the possession of the donee. The subject of the gift must be actually in existence at the time of the donation.

6. The gift of property which is undivided, and mixed with other property, admitting at the same time of division or separation, is null and void, unless it be defined previous to delivery; for delivery of the gift cannot in that case be made without including something which forms no part of the gift.

An undefined gift of divisible property not valid.

Rules in case of two or more donees.

7. In the case of a gift made to two or more donees, the interest of each donee must be defined either at the time of making the gift, or on delivery.

8. A gift cannot be implied. It must be express and unequivocal, and the intention of the donor must be demonstrated by his entire relinquishment of the thing given, and the gift is null and void where he continues to exercise any act of ownership over it.

9. The cases of a house given to a husband by a wife, and of property given by a father to his minor child, form exceptions to the above rule.

10. A formal delivery and seizin are not necessary in the case of a gift to a trustee, having the custody of the article given, nor in the case of a gift to a minor. The seizin of the guardian in the latter case is sufficient.

Of gift on a deathbead.

Vide Wills, p 51.

Resumption admissible.

11. A gift on a deathbead is viewed in the light of a legacy, and cannot take effect for more than a third of the property; consequently no person can make a gift of any part of this property on his deathbead to one of his heirs, it not being lawful for one heir to take a legacy without the consent of the rest.

Resumption admissible.

12. A donor is at liberty to resume his gift, except in the following instances.

13. A gift cannot be resumed where the donee is a relation; nor where anything has been received in return; nor where it has received any accession; nor where it has come into possession of a second donee, or into that of the heirs of the first.

14. Besides the ordinary species of gift, the law enumerates two peculiar kinds of gift.

15. *Hiba bil Iwaz* is said to resemble a sale in all its property; the same conditions attach to it, and the mutual seizin of the donees is not, in all cases, necessary.

Two peculiar kinds of gift.

15. *Hiba bil Iwaz* is said to resemble a sale in all its property; the same conditions attach to it, and the mutual seizin of the donees is not, in all cases, necessary.

16. *Hiba ba shart ul Iwaz*, on the other hand, is said to resemble a sale in the first stage only; that is, before the consideration for which the gift is made has been received, and the seizin of the donor and donee is therefore a requisite condition.

CHAPTER VI.

OF WILLS.

1. There is no preference shown to a written over a nuncupative will, and they are entitled to equal weight, whether the property which is the subject of the will be real or personal.

Nuncupative and real wills equally valid.

2. Legacies cannot be made to a larger amount than one-third of the testator's estate without the consent of the heirs.

Of legacies

3. A legacy cannot be left to one of the heirs without the consent of the rest.

To an heir.

4. There is this difference between the property which is the subject of inheritance and that which is the subject of legacy. The former becomes the property of the heir by the mere operation of law; the other does not become the property of the legatee until his consent shall have been obtained either expressly or impliedly.

Distinction between property acquired by inheritance and by will.

5. The payment of legacies to a legal amount precedes the satisfaction of claims of inheritance.

Legacies precede claims of inheritance.

6. All the debts due by the testator must be liquidated before the legacies can be claimed.

And debts precede legacies.

7. An acknowledgment of debt in favour of an heir on a deathbed resembles a legacy; inasmuch as it does not avail for more than a third of the estate.

Acknowledgment of a debt to an heir.

8. It is not necessary that the subject of the legacy should exist at the time of the execution of the will. It is sufficient for its validity that it should be in existence at the time of the death of the testator.

Of the subject of a legacy.

9. The general validity of a will is not affected by its containing illegal provisions, but it will be carried into execution as far as it may be consistent with law.

Of illegal provisions

10. A person not being an heir at the time of the execution of the will, but becoming one previous to the death of the testator, cannot take the legacy left to him by such will; but a person being an heir at the time of the execution, and becoming excluded previously to the testator's death, can take the legacy left to him by such will.

Special rule relative to legatees

11. If a man bequeath property to one person, and subsequently make a bequest of the same property to another individual, the first bequest is annulled; so also if he sell or give the legacy to any other individual; even though it may have reverted to his possession before his death, as these acts amount to a retraction of the legacy.

A legacy may be retracted by implication.

12. Where a testator bequeaths more than he legally can to several legatees, and the heirs refuse to confirm his disposition, a proportionate abatement must be made in all the legacies.

Rule in case of excessive legacies.

13. Where a legacy is left to an individual, and subsequently a larger legacy to the same individual, the larger legacy will take effect; but where the larger legacy was prior to the smaller one, the latter only will take effect.

And of different legacies to the same person.

14. A legacy being left to two persons indiscriminately, if one of them die before the legacy is payable, the whole will go to the survivor; but if half was left to each of them, the survivor will get only half, and the remaining moiety will devolve on the heirs; so also in the case of an heir and stranger being left joint legatees.

And of the same legacy to two individuals.

15. Where there is no executor appointed, the father or the grandfather may act as executor, or in their default, their executors.

Should be Muhammadans.

16. A Muhammadan should not appoint a person of a different persuasion to be his executor, and such appointment is liable to be annulled by the ruling power.

17. Executor having once accepted cannot subsequently decline the trust.

Cannot resign.

18. Where there are two executors, it is not competent to one of them to act singly, except in cases of necessity, and where benefit to the estate must certainly accrue.

Rule where there are two.

CHAPTER VII.

OF MARRIAGE, DOWER, DIVORCE, AND PARENTAGE.

Definition of marriage.

1. Marriage is defined to be a contract founded on the intention of legalizing generation.

Essentials of

2. Proposal and consent are essential to a contract of marriage.

Conditions of

3. The conditions are discretion, puberty, and freedom of the contracting parties. In the absence of the first condition, the contract is void *ab initio*; for a marriage cannot be

contracted by an infant without discretion, nor by a lunatic. In the absence of the two latter conditions the contract is voidable ; for the validity of marriages contracted by discreet minors, or slaves, is suspensive on the consent of their guardians or masters. It is also necessary that there should be no legal incapacity on the part of the woman ; that each party should know the agreement of the other ; that there should be witnesses to the contract, and that the proposal and acceptance should be made at the same time and place.

4. There are only four requisites to the competency of witnesses to a marriage contract ; namely, freedom, discretion, puberty, and profession of the Musalman faith.

5. Objections as to character and relation, do not apply to witnesses in a contract of marriage as they do in other contracts.

6. A proposal may be made by means of agency, or by letter, provided there are witness to the receipt of the message or letter, and to the consent on the part of the person to whom it was addressed.

7. The effect of a contract of marriage is to legalize the mutual enjoyment of the parties ; to place the wife under the dominion of the husband ; to confer on her the right of dower, maintenance,* and habitation ; to create between the parties, prohibited degrees of relation and reciprocal right of inheritance ; to enforce equality of behaviour towards all his wives on the part of the husband, and obedience on the part of the wife, and to invest the husband with a power of correction in cases of disobedience.

8. A freeman may have four wives, but a slave can have only two.

9. A man may not marry his mother, nor his grandmother, nor his mother-in-law, nor his step-mother, nor his step-grandmother, nor his daughter, nor his grand-daughter, nor his daughter-in-law, nor his grand-daughter-in-law, nor his step-daughter, nor his sister, nor his foster-sister, nor his necc, nor his aunt, nor his nurse.

10. Nor is it lawful for a man to be married at the same time to any two women who stand in such a degree of relation to each other, as that, if one of them had been a male, they could not have intermarried.

11. Marriage cannot be contracted with a person who is a slave of the party ; but the union of a freeman with a slave, not being his property, with the consent of the master

* The right of a wife to maintenance is expressly recognized : so much so, that if the husband be absent, and have not made any provision for his wife, the Law will cause it to be made out of his property ; and in case of divorce, the wife is entitled to maintenance during the period of her probation.

of such slave, is admissible, provided he be not already married to a free woman.

Of the religion of the parties.

12. Christians, Jews, and persons of other religions, believing in one God, may be espoused by Muhammadans.

Presumption of marriage.

13. Marriage will be presumed, in a case of proved continual cohabitation, without the testimony of witnesses; but the presence of witnesses is nevertheless requisite at all nuptials.

Capacity to contract.

14. A woman having attained the age of puberty, may contract herself in marriage with whomsoever she pleases; and her guardian has no right to interfere if the match be equal.

Right of guardians.

15. If the match be unequal, the guardians have a right to interfere with a view to set it aside.

Where an infant contracts.

16. A female not having attained the age of puberty cannot lawfully contract herself in marriage without the consent of her guardians, and the validity of the contract entirely depends upon such consent.

Limitation.

17. But in both the preceding cases the guardians should interfere before the birth of issue.

Contract when dissoluble by the parties.

18. A contract of marriage entered into by a father or grandfather, on behalf of an infant, is valid and binding, and the infant has not the option of annulling it on attaining maturity; but if entered into by any other guardian, the infant so contracted may dissolve the marriage on coming of age, provided that such delay does not take place as may be construed into acquiescence.

Of guardians for marriage.

19. Where there is no paternal guardian, the maternal kindred may dispose of an infant in marriage; and in default of maternal guardians, the Government may supply their place.

Of dower.

Minimum of. When due

20. A necessary concomitant of a contract of marriage is dower, the maximum of which is not fixed, but the minimum is ten dirms,* and it becomes due on the consummation of the marriage (though it is usual to stipulate for delay as to the payment of a part) or on the death of either party or on divorce.

Where no amount fixed

21. Where no amount of dower has been specified, the woman is entitled to receive a sum equal to the average rate of dower granted to the females of her father's family.

* The value of the dirhm is very uncertain. The dirhms, according to one account, make about six shillings and eight pence sterling. See note to Hamilton's translation of the Hedaya, p. 122, Vol. I.

Whether prompt or deferred.

22. Where it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand.

23. It is a rule that whatsoever is prohibited by reason of consanguinity is prohibited by reason of fosterage; but as far as marriage is concerned, there are one or two exceptions to this rule: for instance, a man may marry his sister's foster-mother, or his foster-sister's mother, or his foster-son's sister, or his foster-brother's sister.

Disqualification of fosterage and consanguinity.

Exceptions. 24. A husband may divorce his wife without any misbehaviour on her part, or without assigning any cause, but before the divorce becomes irreversible, according to the more approved doctrine, it must be repeated three times, and between each time the period of one month must have intervened, and in the interval, he may take her back either in an express or implied manner.

25. A husband cannot again co-habit with his wife who has been three times irreversibly divorced, until after she shall have been married to some other individual and separated from him either by the death or divorce; but this is not necessary to a re-union, if she have been separated by only one or two divorces.

Conditions precedent to re-union. 26. If a husband divorce his wife on his deathbed, she is nevertheless entitled to inherit, if he die before the expiration of the term (four months and ten days) of probation, which she is bound to undergo before contracting a second marriage.

27. A vow of abstinence made by a husband, and maintained inviolate for a period of four months, amounts to an irreversible divorce.*

What amounts to a divorce. 28. A wife is at liberty, with her husband's consent, to purchase from him her freedom from the bonds of marriage.

29. Another mode of separation is by the husband, making oath, accompanied by an imprecation as to his wife's fidelity, and if he in the same manner deny the parentage of the child of which she is then pregnant, it will be bastardized.

Another mode of divorce. 30. Established impotency is also a ground for admitting a claim to separation on the part of the wife.

Of impotency. 31. A child born six months after marriage is considered to all intents and purposes the offspring of the husband; so also a child born within two years after the death of her husband or after divorce.

* There is recognized a species of reversible divorce, which is effected by the husband comparing his wife to any member of his mother, or some other relation prohibited to him, which must be expiated by emancipating a slave, by alms, or by fasting. This divorce is technically termed *Zihar*.—Hedaya, Book IV, Chap. IX.

32. The first born child of a man's female slave is considered his offspring, provided he claim the parentage, but not otherwise; but if after his having claimed the parentage of one, the same woman bear another child to him, the parentage of that other will be established without any claim on his part.

33. If a man acknowledge another to be his son, and there be nothing which obviously renders it impossible that such relation should exist between them, the parentage will be established.

CHAPTER VIII.

OF GUARDIANS AND MINORITY.

1. All persons, whether male or female, are considered minors until after the expiration of the sixteenth year unless symptoms of puberty appear at an earlier period.

2. There is a sub-division of minority, though not so minute as in the Civil Law, the term minor being used indiscriminately to signify all persons under the age of puberty, but the term *Sabi* is applied to persons in a state of infancy, and term *Murāhik* to those who have nearly attained puberty.*

3. Minors have not different privileges at different stages of their minority, as in the English Law.†

4. Guardians are either natural or testamentary.

5. There are also near and remote. Of the former description are fathers and paternal grandfathers and their executors and the executors of such executors. Of the latter description are the more distant paternal kindred, and their guardianship extends only to matters connected with the education and marriage of their wards.

* The great distinction was therefore into majors and minors; but minors were again sub-divided into *Puberes* and *Impuberes*, and *Impuberes* again underwent a sub-division into *Infantes* and "*Impuberes*."—Summary of Taylor's Roman Law, p. 124. In the Muhammadan Law a person after attaining majority is termed *Shab* till the age of thirty-four years, he is termed *Kohal* until the age of fifty-one, and *Sheikh* for the remainder of his life.

† The ages of male and female are different for different purposes. A male at twelve years old may take the oath of all allegiance; at fourteen is at years of discretion, and therefore may consent or disagree to marriage, may choose his guardian, and, if his discretion be actually proved, may make his testament of his personal estate; and seventeen may be an executor, and at twenty-one is at his own disposal, and may alienate his lands, goods, and chattels. A female also at seven years of age may be betrothed or given in marriage, at nine is entitled to a dower; at twelve is at years of maturity, and therefore may consent or disagree to marriage, and, if proved to have sufficient discretion, may bequeath her personal estate; at fourteen is at years of legal discretion and may choose a guardian, at seventeen may be executress; and at twenty-one may dispose of herself and her lands.—See Blackstone's Com. Vol. I, p. 463.

6. The former description of guardians answers to the term of *guardians* in the Civil Law, and of manager in the Bengal Code of Regulations; having power over the property of a minor for purposes beneficial to him; and in their default this power does not vest in the remote guardians, but devolves on the ruling authority.

7. Maternal relations are the lowest species of guardians, as their right of guardianship for the purposes of education and marriage takes effect only where there may be no paternal kindred nor mother.

8. Mothers have the right (and widows *durante viduitate*) to the custody of their sons until they attain the age of seven years, and of their daughters until they attain the age of puberty.

Special rules. 9. The mother's right is forfeited by marrying a stranger, but reverts on her again becoming a widow.

10. The paternal relations succeed to the right of guardianship, for the purposes of education and marriage in proportion to the proximity of their claims to inherit the estate of the minor.

11. Necessary debts contracted by any guardian for the support or education of his ward must be discharged by him on his coming of age.

12. A minor is not competent *sui juris* to contract marriage, to pass a divorce, to manumit a slave, to make a loan, or contract a debt, or to engage in any other transaction of a nature not manifestly for his benefit, without the consent of his guardian.

Competency of 13. But he may receive a gift, or do any other act, which is manifestly for his benefit.

14. A guardian is not at liberty to sell the immoveable property of his ward, except under seven circumstances, *viz.*, 1st, where he can obtain double its value; 2ndly, where the minor has no other property, and the sale of it is absolutely necessary to his maintenance; 3rdly, where the late incumbent died in debt which cannot be liquidated but by the sale of such property; 4thly, where there are some general provisions in the will which cannot be carried into effect without such sale; 5thly, where the produce of the property is not sufficient to defray the expenses of keeping it; 6thly, where the property may be in danger of being destroyed; 7thly, where it has been usurped, and the guardian has reason to fear that there is no chance of fair restitution.

15. Every contract entered into by a near guardian on behalf and for the benefit of the minor, and every contract entered into by a minor with the advice and consent of his near

~~Exception.~~ guardian, as far as regards his personal property, is valid and binding upon him, provided there be no circumvention or fraud on the face of it.

16. ~~Monoys~~ ^{Persons} are civilly responsible for any intentional damage or injury done by them to the property or interests of others ^{Responsibility} though they are not liable in criminal matters to retaliation or to the *ultimum supplicium*, but they are liable to discretionary chastisement and correction.

CHAPTER X.

OF ENDOWMENTS.

1. An endowment signifies the appropriation of property to the Definition of service of God; when the right of the appropriator an endowment becomes divested, and the profits of the property so appropriated are devoted to the benefit of mankind.

2. An endowment is not a fit subject of sale, gift, or inheritance; Rules relative and if the appropriation is made *in extremis*, it takes to effect only to the extent of a third of the property of the appropriator. Undefined property is a fit subject of endowment.

3. Endowed property may be sold by judicial authority, when the Sale of—when sale may be absolutely necessary to defray the expense allowable. of repairing its edifices or other indispensable purposes, and where the object cannot be attained by farming or other temporary expedient.

4. In case of the grant of an endowment of an individual with rever- Grant of—to sion to the poor, it is not necessary that the grantees a person not in existence. specified shall be in existence at the time. For instance, if the grant be made in the name of the children of A with reversion to the poor, and A should prove to have no children, the grant would nevertheless be valid, and the profits of the endowment will be distributed among the poor.

5. The ruling power cannot remove the superintendent of an endowment appointed by the appropriator, unless on proof of misconduct; nor can the appropriator himself remove such person, unless the liberty of doing so may have been specially reserved to him at the time of his making the appropriation. Superintendent of—not removable *quamdiu se bene gesserit*

6. Where the appropriator of an endowment may not have made Of the succession to any express provision as to who shall succeed to the office of superintendent on the death of the person nominated by himself, and he may not have left an executor, such superintendent may, on his deathbed, appoint his own successor, subject to the confirmation of the ruling power,

7. The specific property endowed cannot be exchanged for ~~other~~ property unless a stipulation to his effect may have been made by the appropriator, or unless circumstances should render it impracticable to retain possession of the particular property, or unless manifest advantage be derivable from the exchange; nor should endowed lands be formed out on terms inferior to their value, nor for a longer period than three years, except when circumstances render such measure absolutely necessary to the preservation of the endowment.

8. The injunctions of the appropriator should be observed except in the following cases: If he stipulate that the superintendent shall not be removed by the ruling authorities, such person is nevertheless removable by them on proof of misconduct. If he stipulate that the appropriated lands shall not be left out to farm for a longer period than one year, and it be difficult to obtain a tenant for so short a period, or, by making a longer lease, it be better calculated to promote the interests of the establishment, the ruling authorities are at liberty to act without the consent of the superintendent. If he stipulate that the excess of the profits be distributed among persons who beg for it in the mosque, it may nevertheless be distributed in other places and among the necessitous, though not beggars. If he stipulate that daily rations of food be served out to the necessitous, the allowance may nevertheless be made in money. The ruling authorities have power to increase the salaries of the officers attached to the endowment, when they appear deserving of it, and the endowed property may be exchanged, when it may seem advantageous, by order of such authorities, even though the appropriator may have expressly stipulated against an exchange.

9. Where an appropriator appoints two persons joint superintendents, it is not competent to either of them to act separately; but where he himself retains a moiety of the superintendence, associating another individual, he (the appropriator) is at liberty to act singly and of his own authority in his self-created capacity of joint superintendent.

10. Where an appropriation has been made by the ruling power, from the funds of the public treasury, for public purposes, without any specific nomination, the superintendence should be entrusted to some person most deserving 14 point of learning; but in private appropriations, with the exceptions above mentioned, the injunctions of the founder should be fulfilled.

TEXT-BOOKS, B. L. EXAMINATION, 1893.

1. The principles of Jurisprudence; the History and Constitution of the Courts of Law and Legislative Authorities in India.

Maine's Ancient Law; Markby's Elements of Law third edition; Student's Austin's Jurisprudence by Campbell, omitting Parts, II and III; Cowell's Tagore Law Lectures, 1872.

2 The Law relating to Persons in their Public and Private Capacities, including the Law of Testamentary Succession.

Stephen's Blackstone, Book I, Book III, Chapters 1—4, Book IV, Part I, Chapters 2 and 6. Act IX of 1875 (Majority); Act VIII of 1890 (Guardians and Wards); Act IX of 1879 (B.C.), Parts I, II, and VII; Act III of 1881 (P.C.) (Court of Wards.) Act III of 1872 (Civil Marriage); Act X of 1865 (Succession Act) except Parts III—V, XXX, XXXI, and XXXV—XL, Act XXI of 1870 (Hindu Wills Act) except the portions of the Indian Succession Act omitted from the study of that Act, Act V of 1881 (Probate), Act VII of 1889 (Succession Certificate); Mayne's Hindu Law and Usage, Chapter XI (Wills), Macnaghten's Principles of Mahomedan Law, Chapter VI (Wills).

3. The Law of Property including the Law relating to Land Tenures and the Revenue Laws.

Stephen's Blackstone, Book II, Introduction, and Part I, Chapters 3—9, 15, 16, 20, and 23, and Book II, Part II, Chapters I, 2, and 4; Regulations I, VIII, XIX (Sections 1—71, and XXXVII (Sections 1—6, 10, 12, 15) of 1793. Regulation VIII of 1819, Regulation XI of 1825; Act XI of 1850, omitting Sections 4, 16, 40—52, and 56—62; Act VII of 1880 (B. C.), Act XIX of 1873, Sections 146, 150, and 166—168; Act VIII of 1885, omitting Sections 2, 31—33, 39, 56—60, 62—64, 69—71, 76—83, 93—158, and 186—196. Act XII of 1881 Sections 1—23; Act VIII of 1876 (B. C.), Sections 8—16, 87—98.

4. The Law of Property, including the Laws of Transfer, Prescription and Pre-emption.

Act IV of 1882 (Transfer of Property Act); Act III of 1877 (Registration Act) Act XV of 1877, Sections 26—28 (Prescription), Maine's Hindu Law and Usage Chapter XII (Religious and Charitable Endowments) Macnaghten's Principles of Mahomedan Law, Chapters III—V and X (Sale, Pre-emption, Gifts, and Endowments); Snell's Principles of Equity, Part I, Part II, Chapters I—VI, and Part III, Chapters I—VI.

TEXT-BOOKS FOR B. L. EXAMINATION, 1893.—continued

5. The Law of Contracts and Torts. — Stenken's Blackstone, Book II. Chapter V, Pollock's Law of Contracts, Chapters I—5, 7, and 9—10; Act I. of 1872; Act I of 1877.
6. The Law of Criminal Procedure. — The Indian Penal Code (Act XXV of 1860), the whole of Chapters 1—5 and such portions of Chapters 6—23 as do not relate exclusively to the amount of punishment to be inflicted for an offence; The Code of Criminal Procedure (Act X of 1882) except Parts 5, 8, and Chapters 38—40, 42—43, and 46.
7. The Law of Civil Procedure, including the Law of Evidence and the Law of Limitation. — Best's Principles of the Law of Evidence, Introduction, Book I and Book IV, Code of Civil Procedure (Act XIV of 1882), Chapters 1—12, 15—22, 30—31, 33, 35—37, 40—43, 45—47; The Evidence Act (Act I of 1872); The Limitation Act (Act XV of 1877), omitting Schedule II.
8. The Hindu Law and the Mahomedan Law (with the exception of parts already included), and the Law of Intestate Succession. — Mitakshara, Chapter I, Sections I—V, Chapter II, Sections I—X; Dayabhaga Chapters I, II, V, XI; Mayne's Hindu Law and Usage, omitting Chapters 1—4, 6—7, 11—12, 13, 20, and 21; Jogindranath Siromani's Commentaries on Hindu Law, Chapters 1, 2, 3, 11, and 12; Sirajya (except the details as to succession of distant kindred); Macnaghten's Principles of Mahomedan Law, Chapters II, VII, and VIII; Act X of 1865 (Succession Act), Parts III—V.

NOTE.—In the list of text-books for the B. L. Examination when any Act is named, it is to be understood to mean that Act with all subsequent amendments.